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JOHNS HOPKINS UNIVERSITY STUDIES

IN

HISTORICAL AND POLITICAL SCIENCE

(Edited 1882-1901 by H. B. Adams)

J. M. VINCENT

J. H. HOLLANDER

W. W. WILLOUGHBY

Editors

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VOLUME XXI

INDIANA, NORTH CAROLINA  
AND MARYLAND

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## TABLE OF CONTENTS

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	PAGE
I-II. The Wabash Trade Route in the Development of the Old Northwest. By E. J. Benton . . . . .	1
III-IV. History of Internal Improvements in North Car- olina. By C. C. Weaver. . . . .	113
V. History of Japanese Paper Currency. By M. Takaki. . . . .	209
VI-VII. Economics and Politics in Maryland, 1720-1750, and the Public Services of Daniel Dulany the Elder. By St. G. L. Sioussat. . . . .	269
VIII-IX-X. Beginnings of Maryland, 1631-1639. By. B. C. Steiner. . . . .	353
XI-XII. English Statutes in Maryland. By St. G. L. Sioussat. . . . .	465
Index. . . . .	569





THE WABASH TRADE ROUTE IN  
THE DEVELOPMENT OF THE  
OLD NORTHWEST



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THE WABASH TRADE ROUTE IN  
THE DEVELOPMENT OF THE  
OLD NORTHWEST

BY  
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Fellow in History in the Johns Hopkins University

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## CONTENTS

	PAGE
PREFACE . . . . .	7
CHAPTER I.—EARLY HISTORY OF THE WABASH TRADE ROUTE . . . . .	9
CHAPTER II.—THE WABASH AND ERIE CANAL . . . . .	32
The Origin and Federal Character . . . . .	32
Organization and Construction as an Interstate Enterprise .	45
As the Trunk Line of a General System of Internal Improvements . . . . .	50
Mismanagement and Collapse in the Panic of “1837” . . .	57
The Butler Bill: Repudiation or Resumption . . . . .	63
The Administration of the Trust . . . . .	74
CHAPTER III.—INFLUENCE ON THE DEVELOPMENT OF THE OLD NORTHWEST . . . . .	89



## PREFACE

Artificial and natural waterways have exerted a definite influence in the history of the Old Northwest. They have promoted and directed the westward movement of population and made possible the development of its resources. The advantages which the waterways offered to commerce stimulated settlement along their shores. When supplemented by Indian trails and later by white men's turnpikes, these trade routes formed a network fairly covering the region. The measurement of this factor in the history of the Old Northwest has been the general object of this research, though as a contribution to the subject the present paper has been limited to an intensive study of one only of the main waterways.

During the period of French, British, and American occupation of the Northwest territory, the Wabash route was one of the natural waterways from the lakes to the Mississippi river. The principal links in this chain were Lake Erie, the Miami river, the Wabash river, with the portage connecting them, and the Ohio river. Later, after state governments had been established in this region, a canal known as the Wabash and Erie canal paralleled the earlier natural waterway from Lake Erie to the Ohio river. Such is, in brief, the scope of this inquiry.

Acknowledgments are due the many individuals who have so kindly given assistance; especially to Mr. W. E. Henry, state librarian of Indiana, for making so easy and pleasant the use of the valuable documentary materials in

the state library; to Col. R. S. Robertson, of Fort Wayne, for the use of his private collections, and for repeated assistance in other ways. Thanks are similarly due to Judge Howe and Rev. M. L. Hayne, both of Indianapolis; to Mr. Geo. A. Baker, secretary of the Northern Indiana Historical Society, and to Mr. Geo. S. Cottman, of the Indianapolis press. Very many letters of inquiry have been written to men connected in various ways with the earlier history of their respective communities and satisfactory replies have been uniformly received. It is pleasant to record the encouragement everywhere received while conducting this series of investigations. Dr. Vincent, Dr. Hollander, Dr. Willoughby, and Dr. Ballagh, of the Johns Hopkins University, have very kindly read this in whole or in part and have made many suggestions as to subject matter or method of treatment which have been adopted. Further acknowledgments will be found in the footnotes.

# THE WABASH TRADE ROUTE IN THE DEVELOPMENT OF THE OLD NORTHWEST

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## CHAPTER I

### THE EARLY HISTORY OF THE WABASH TRADE ROUTE

One of the most evident facts in the history of the French in America is the influence exerted by various waterways in distributing and directing the course of their settlements. When France obtained control of the lower St. Lawrence, its possession of the entire basin and of the Mississippi valley was a logical sequence. With Quebec established, the empire of New France became inevitable. The great waterways led the hardy voyagers continually further inland, though the implacable hostility of the Iroquois Indians restricted them for a time to the more northern water routes.

The earliest expeditions from the French settlements on the St. Lawrence to the upper lakes followed the course of the Ottawa river rather than the upper St. Lawrence. Successive expeditions pushed the route farther west until under the leadership of such intrepid explorers as Jean Nicollet, Allouez, and Marquette there was developed about the middle of the seventeenth century what may be regarded as a westward highway for the French, continuous from the settlements on the lower St. Lawrence to the Mississippi valley.<sup>1</sup> The voyagers' canoes followed the Ottawa river

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<sup>1</sup> Jean Nicollet probably reached the portage of the Wisconsin in 1634; Allouez penetrated to the same point in 1670; Marquette used

from Montreal, then by portage to Lake Nipissing, and to Georgian bay, an eastern arm of Lake Huron, and thence by the northern lakes to Green bay, the Fox, and by portage to the Wisconsin and Mississippi rivers. It was the most natural route because in every way it was the line of least resistance. It avoided the near approaches to the Iroquois Indian limits<sup>2</sup> and led directly to the numerous Indian haunts around the greater lakes. As the objective point for the westward expeditions was gradually moved farther south into the Mississippi basin, shorter routes across the territory, later known as the Old Northwest, were used. The Wisconsin portage soon yielded in point of frequency of use to those at the south end of Lake Michigan. The route up the Illinois river and by portage into the Chicago river and Lake Michigan was followed by Joliet and Marquette on their return from the discovery of the Mississippi.<sup>3</sup> A few years later La Salle followed the coast of Lake Michigan to the St. Joseph river and up that stream, thence by a portage to the Kankakee, and so again to the usual destination—points on the Illinois and the Mississippi.<sup>4</sup>

About this time, in the course of the evolution of new routes leading to the Mississippi, occurred the first use of the Wabash river by white explorers. This stream was occasionally reached in the earliest period by leaving Lake Michigan on the St. Joseph river and then by a short portage to the headwaters of a northern branch of

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the Fox-Wisconsin portage in his expedition to the Mississippi river in 1673. See Butterfield, History of Discovery of Northwest by John Nicollet, p. 68; Jesuit Relations, 1670, (Thwaite), p. 231; and ibid., 1673-7, p. 105.

<sup>2</sup> The Iroquois nations controlled the territory represented by western New York, western Pennsylvania and the whole of Ohio; or more loosely and perhaps in closer conformity to the facts in the case, that region to the south of the lower lakes.

<sup>3</sup> Jesuit Relations, 1673-7, p. 161; Cp. map of Franquelin, 1684, in Winsor, Narrative and Critical History, IV, pp. 224, 209; Shea, Mississippi Valley, p. xxxii.

<sup>4</sup> 1679; Shea, Mississippi Valley, p. xxxvi.

the Wabash, but the more important way to reach it was by the "Miami river of Lake Erie" and a short portage.<sup>5</sup> Of the five great portage routes,<sup>6</sup> this was the last one to come into general use by the whites. It proved to be the shortest route connecting the lower French posts on the Mississippi with those on the St. Lawrence and has been quite happily called the Indian Appian way.<sup>7</sup> It was a common highway for the various Indian tribes of the Northwest. The French routes were in almost all cases the watercourses, portage paths, or overland trails in earlier use by the Indians, who now became the guides. The portage from French creek to the Alleghany was used by La Salle, but its importance dates from a much later period, when it came to connect strategic points on the English frontier. In the race with the English for the occupation of the interior, the French gradually drew the cordon tighter. The paramount task for them was to keep in ready and rapid communication with one another and with outlying posts their two commercial and political centers, Quebec and New Orleans.

The discovery of a portage connecting two rivers leading into new regions was always a most valuable discovery for the French. Such a chain of rivers was to them a ready-made road, opening at once all the adjacent territories without the difficulties of overland trails. It is, however,

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<sup>5</sup> "The Miami river of Lake Erie" was later known as the Maumee river.

<sup>6</sup> Winsor, *Narrative and Critical History*, IV, p. 224, gives the following:

(a) Green Bay, Lake Winnebago and Fox river to the Wisconsin river and to the Mississippi.

(b) From the upper end of Lake Michigan, the Chicago river, and a short portage to the Des Plaines and Illinois rivers.

(c) The St. Joseph of Lake Michigan, a portage to the Kankakee and so to the Illinois river again.

(d) The St. Joseph river to the Wabash by a longer portage and then down to the Ohio and Mississippi.

(e) The Miami of Lake Erie, a portage to the Wabash and down as above.

<sup>7</sup> John Reynolds, *Sketches of the country on the Northern route*, p. 151.

gether probable that the question of the first use of the Wabash trade route will have to remain unsolved. There is the barest possibility that Sanson indicates a knowledge of the Maumee and Wabash rivers with the connecting portage in his map of Canada, 1657.<sup>8</sup> Probably more than one unnamed traveler launched his boat on these streams but it remained for La Salle and Allouez to give to the French a permanent interest in this route. The former pointed out its trade value and the latter added an interest in the missions to the Miamis tribes. But here again it is a difficult problem to determine the source of the knowledge of these two fearless explorers.

Many have tried to trace La Salle's voyage of 1670 by the Wabash river.<sup>9</sup> Joliet's map of 1674,<sup>10</sup> which locates La Salle's route by way of Lake Erie and the Wabash, has been used in support of this contention. But the route laid down is clearly a later interpolation and adds nothing directly to the argument. It is, however, most significant that within a few years La Salle had become in some manner fully aware of this Wabash route and the advantages it offered. During the years that he was in command at Ft. Frontenac, he appears to have been evolving great schemes for appeasing the Iroquois and for opening up an easy channel of trade to the Mississippi valley by the Maumee and Wabash;<sup>11</sup> but by 1682 he seems to have temporarily abandoned this plan, "because," he says, "I could no longer go to the Illinois but by the Lakes Huron and Illinois, as the other routes which I have discovered by

<sup>8</sup> R. S. Robertson, *American Antiquarian*, Vol. II, p. 123. A reduced copy of this map is found in *ibid.*, Vol. I, p. 233.

<sup>9</sup> Parkman, who is generally followed now on this question, holds that La Salle's expedition was by the Alleghany portage to the Ohio river. Shea's Translation of Charlevoix [History of New France, Vol. III, p. 198], accepting the same view, places the date, however, as 1671. For an excellent discussion of other theories, see Justin Winsor, *Cartier to Frontenac*, p. 224.

<sup>10</sup> Justin Winsor, *Narrative and Critical History*, Vol. IV, pp. 212-3.

<sup>11</sup> Winsor, *Cartier to Frontenac*, p. 256.

the head of Lake Erie and by the southern coast of the same, have become too dangerous by frequent encounters with the Iroquois who are always on that shore.”<sup>12</sup>

La Salle’s description of the territory between Lake Erie and Lake Michigan indicates a familiarity with this region scarcely possible save from personal observation. In a letter written November 9, 1680, he says, “There is at the end of Lake Erie ten leagues below the strait a river by which we could shorten the route to the Illinois very much. It is navigable to canoes to within two leagues of the route now in use.”<sup>13</sup> These facts make La Salle the explorer of the regions represented by our study. The question as to whether his knowledge began with the expedition of 1670, or whether, at that time, he merely skirted the territory on the south, entering the Ohio river farther to the east, and gained his information of the Wabash country while returning to the St. Lawrence from a later expedition, remains unsettled, though the latter view seems to me altogether the more probable. However, in either case, the French claim to these lands in so far as based on explorations is traceable to him, and his representations were the first to direct the attention of the French to the regions south and west of Lake Erie.<sup>14</sup>

The claim that Allouez as a missionary to the Miamis at this time, 1680, must necessarily have visited these regions seems to be based on a misconception of the situation of the Miamis tribes which were then located near Lake Michigan and southward therefrom.<sup>15</sup> No evidence has been found to show that Allouez ever penetrated the regions southeast beyond the immediate environs of Lake Michigan, yet there is a strong likelihood that he did. The Miami Indians mi-

<sup>12</sup> Margry, *Découvertes des français dans L’Amerique Septentrionale*, Vol. II, p. 296. Subsequently cited under author only.

<sup>13</sup> Ibid., Vol. II, p. 98.

<sup>14</sup> Margry, Vol. I, pp. 377-8; N. Y. Col. Docs. Vol. X, pp. 243, 293, 383; Fiske, *The Discovery of America*, Vol. II, p. 534.

<sup>15</sup> Jesuit Relations, Vol. XLIV, pp. 247, 324; Vol. LXIX, p. 300; Charlevoix, p. 186; N. Y. Col. Docs., Vol. IX, pp. 890-1.

grated soon after this date to the headwaters of the Wabash river and the French mission followed them, and this mission became the cause of many expeditions to the Wabash country.

The very erroneous conceptions of the course and location of the various tributaries of Lake Erie and the Ohio river, prevailing for more than a half century following, is evidence beyond question that any explorations in that direction in the seventeenth century were of a hasty and desultory character. The northern streams and upper lakes are accurately drawn on the early French maps long before a similar accuracy appears in the south.<sup>16</sup> Franquelin's map of 1682 places the Wabash river as a stream running due west of its course, forming a confluence with the Illinois river.<sup>17</sup> This and Colvert's map<sup>18</sup> confuse the Wabash and Ohio rivers, making only one stream to drain from east to west the territory now comprised in the states of Ohio and Indiana. Hennepin's map of 1683<sup>19</sup> makes Lake Erie to extend oblong north and south rather than east and west as far as the parallel of the mouth of the Ohio. Thus it covers the entire states of Ohio and Kentucky. Nor does the same author alter this in his map of 1697.<sup>20</sup>

A much greater degree of accuracy as to the Wabash and Ohio rivers and Lake Erie is attained in Franquelin's map of 1684.<sup>21</sup> His map of 1688 is one of the earliest showing the portage by way of the "River des Miamis of Lake Michigan"<sup>22</sup> and the Wabash river. The "Coronelli et Tellemon" map also shows that this portage from Lake Michigan was known. None of the cartographers indi-

<sup>16</sup> B. A. Hinsdale, *The Old Northwest*, p. 28.

<sup>17</sup> Winsor, *Narrative and Critical History*, Vol. IV, p. 227.

<sup>18</sup> Winsor, *The Mississippi Basin*, p. 28.

<sup>19</sup> Winsor, *Narrative and Critical History*, Vol. IV, p. 249.

<sup>20</sup> *Ibid.*, IV, p. 253.

<sup>21</sup> *Ibid.* Vol. IV, p. 228. Cp. D'Anville's map of La Salle's explorations of about same date, reproduction in Andreas, A. T., *History of Chicago*, pp. 58-9, Chicago, 1884.

<sup>22</sup> Later called the St. Joseph river.

cates a knowledge on the part of the author of any Lake Erie portage until well into the eighteenth century.<sup>23</sup>

French colonization was slow. The trader opposed agricultural settlements because they destroyed his trade; the Jesuit was often hostile to them because they destroyed his mission fields. The French posts were generally little more than military garrisons. But slowly and deliberately during the closing years of the seventeenth century and the first half of the eighteenth, the French line of control was drawn closer to the English frontiers. The plundering expeditions of the Iroquois to the south of Lake Erie were the most serious check on this process of eastward expansion. The Erie Indians, inhabiting the region of the Ohio and Indiana portages, were wholly destroyed by the Iroquois shortly before the discovery of the Mississippi by the French,<sup>24</sup> and these hostile tribes took possession of Lake Erie and its southern environs. For the remainder of the seventeenth century the weak hold of the French on the interior offered little opposition to Indian raids. The Iroquois practically controlled these lands and the French made little use of the waterways leading from Lake Erie to the south and west.<sup>25</sup>

A series of events at the beginning of the eighteenth century completely changed the course of French history in the West. Differences between the Fox Indians, located to the west of Lake Michigan, and the French alienated the

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<sup>23</sup> Winsor, *Narrative and Critical History*, IV, pp. 230-232.

<sup>24</sup> "The Eries were extirpated by the Iroquois above a century past, from which time they have been in possession of Lake Erie." This legend is found on a map in Bowen and Gibson, "North America," London, 1763. Cp. Charlevoix, *History of New France*, Vol. I, p. 226; *Jesuit Relations*, 1654, p. 9; *ibid.*, 1660, p. 7; Force in the *Historical and Philosophical Society of Ohio Publications* fixes the date at 1656.

<sup>25</sup> The Iroquois devastations about 1667 extended west to the Illinois. Charlevoix, *History of New France*, Vol. III, pp. 107, 205; Winsor, *Narrative and Critical History*, IV, p. 225; *ibid.* for La Houtan's map, p. 258; Mag. West. History, I, p. 41; *Western Reserve Hist. Tracts*, No. 40; J. H. Perkins, *Memoirs and Writings*, Vol. II, p. 186.

former completely. For nearly half a century this hostility effectually checked the growth of French trade and occupation in the Wisconsin regions. The result was to impel the French to strengthen a more direct connection with the Mississippi settlements than by the Wisconsin and Lake Michigan, to secure more fully the less remote posts, and to foster trade in this direction. A change of policy was at once resorted to. The French along Green bay and in the other posts west of Lake Michigan were recalled and nearer posts were strengthened.<sup>26</sup>

Cadillac wrote to Count Pontchartrain at this time: "The forces of the French are too much scattered; they live too far apart. It is absolutely necessary to draw them together."<sup>27</sup> And at this opportune moment Cadillac presented his plan for a settlement on the strait connecting Lake Erie with Lake Huron. Cadillac argued further in an interview with Count Pontchartrain the importance of attracting the friendly Indians around such a French post and building up a bulwark against the advances of the Iroquois, with the further purpose of cutting off their western fur trade and ultimately of conquering them. In addition, he argued the need of anticipating the encroachments of the English in these regions.<sup>28</sup> Cadillac's plan met with a favorable reception in France; Fort Pontchartrain, the Detroit post, was founded in 1701, and the key to a new course for French expansion was established.

Another event of importance to the success of Cadillac's scheme was the migration of the Miamis Indians eastward from the head of Lake Michigan to the headwaters of the Maumee and Wabash rivers. This movement seems to have been a gradual migration of the various tribes composing this confederacy towards those hunting grounds so long abandoned as a consequence of the

<sup>26</sup> Turner, *The Fur Trade of Wisconsin*, pp. 35-36.

<sup>27</sup> Sheldon, E. M., *Early History of Michigan*, p. 85, New York, 1856. Almost entirely made up of translations of documents.

<sup>28</sup> *Ibid.* p. 85; Margry, Vol. V, pp. 135-250, especially p. 195.

Iroquois wars and raids. The hostility of the Wisconsin Indians, the advantages of the French trade, and the value of the new regions were factors almost equally strong forcing this change. By 1712 the Miamis Indians had taken possession of the entire upper Wabash valley,<sup>29</sup> and gradually spread over the country eastward from that as far as the Big Miami river in Ohio.<sup>30</sup> Other tribes settled farther east: the Wyandots migrated there about 1701; the Shawnee in 1740; the Delawares in 1749 or 1750. Altogether about 12,000 Indians were located in Ohio and Indiana by 1750. These tribes were generally friendly to the French and continued to be an effectual barrier to the Iroquois raids.<sup>31</sup> The value of their trade and their aid promoted the growth of a line of forts on the Wabash leading to the lower Mississippi posts.<sup>32</sup>

The idea of a line of forts connecting Canada with the West and South became a favorite scheme of the French government at an early day. La Salle's correspondence with the ministers of Louis XIV contains a suggestion for such a policy.<sup>33</sup> The fear of English participation in a valuable fur trade and the enterprise of French merchants

<sup>29</sup> The gradual migration of the Miamis Indians eastward from the Mississippi, across southern Wisconsin and northern Illinois, around the head of Lake Michigan and their settlement around Detroit, and on the Wabash, Maumee, and Miami rivers can be readily traced from the writings of French officers, missionaries, and travelers.

<sup>30</sup> Jesuit Relations, LXIX, pp. 299-300, N. Y. Col. Doc., Vol. IX, pp. 885-892; The Fergus Historical Collection, No. 27, p. 107; Wisconsin Historical Collection, Vol. VII, pp. 123-187; Journal of Captain Trent, p. 15.

<sup>31</sup> The fighting force of the Miamis Indians numbered at this time not far from 1400 warriors. The estimate of 8000 men made in the Jesuit Relations, Vol. XLIV, pp. 247, 324, is undoubtedly a gross exaggeration. See Hutchins, Topographical Description, p. 66, London, 1778; N. Y. Col. Docs. Vol. IX, p. 891.

<sup>32</sup> Journal of Captain Trent, p. 13; Albach, Annals of the West, p. 80; Ind. Hist. Soc. Pub., Vol. I, No. 4, pp. 132-3; Fergus, Historical Collection, No. 27, p. 107; Winsor, Narrative and Critical History, Vol. IV, p. 212, (map).

<sup>33</sup> Old Fort Chartres, p. 23, No. 12 of Fergus Hist. Collection, Chicago, 1881.

had far more to do with the establishment of these posts than any far sighted imperial policy, but back of every individual adventure, nevertheless, stood the French government desiring to build up a New France in the wilderness beyond the mountains and thus anticipate any westward ambitions of its inveterate rivals, the English. There was a clear cut policy of France for colonial expansion that became evident in its dealings with America as early as 1690. Mercantile adventurers took the first steps in winning the valleys of the Northwest for the French, but the French government was always ready to reap the fruits of individual enterprise.

The early records repeatedly show that the French by increasing the number of posts were struggling for new markets.<sup>34</sup> "To maintain the trade in beaver skins" was the avowed object.<sup>35</sup> The directors of the Company of the Colony of Canada, having a monopoly of the fur trade at Fort Frontenac and Detroit, represented that the burdens imposed upon them for this privilege were too heavy and asked, as a partial remedy, for an extension of their monopoly by the establishment of more trading posts. One among the Miamis, and another at the mouth of the Ohio were among those urged.<sup>36</sup> Such motives prevailed. Kaskaskia had been settled in the last century, and, under this new impetus given to the planting of trading posts, the mouth of the Ohio was selected as a suitable point.<sup>37</sup> This site was not well chosen; it proved to be an unhealthful location and was abandoned in its second year.

The chief village of the Miamis became one of the earliest posts in the line to the southwest of Detroit on the

<sup>34</sup> Margry, Vol. V, pp. 175, 195, 227, 353, 356-360; Vol. VI, p. 658.

<sup>35</sup> Ibid., Vol. V, p. 356.

<sup>36</sup> Letters of Directors, Nov. 10, 1701, Margry, Vol. V, pp. 175-180, 360-367.

<sup>37</sup> This was called Fort St. Vincent, but it is not to be confused with the later post on the Wabash known as Vincennes. Fort St. Vincent was founded in 1702, abandoned in 1704. Dunn, Indiana p. 39; Craig, Ouiatanon, pp. 331-2.

Wabash route. It was, in fact, an outpost of the Detroit colony. No garrison seems to have been stationed there nor did it ever attain, under the French occupation, a greater degree of dignity than to be an Indian trading post and the chief village of an Indian confederacy.<sup>38</sup> In 1719 or 1720 another post was established farther down the Wabash in the midst of the Ouiatanon Indians. This was a military post established by Sieur Dubuisson with a garrison from Canada.<sup>39</sup> Some years later while Sieur de Vincennes was in command at Ouiatanon that garrison with the district below was placed within the limits of Louisiana, and Sieur de Vincennes was ordered to establish a fort lower down on the Wabash, and "Au Post," or "The Post," not known until after 1752 as Vincennes, was founded in 1727.<sup>40</sup> Other posts established during these years completed the chain of forts connecting Canada with Louisiana. Fort Chartres in 1720 and Fort Niagara in 1726 were among the more important.<sup>41</sup>

Wherever there existed a group of Indian villages, such a point determined the location of a French garrison or trading post.<sup>42</sup> Where, on the other hand, no important Indian villages previously existed to make the trade immediately remunerative, but where the strategic importance of a place itself made it necessary to plant a fort as at Detroit, one of the earliest concerns of the colonial policy of the French was to attract Indian tribes to take up their residence in the immediate vicinity.<sup>43</sup> This policy offers a

<sup>38</sup> Fort Wayne was established at this point by the military forces of the United States.

<sup>39</sup> N. Y. Col. Docs. Vol. IX, p. 894; Craig, Ouiatanon, Ind. Hist. Pub. Vol. II, p. 329.

<sup>40</sup> Mag. of Am. Hist., Vol. XXI, p. 392, and XXII, pp. 146-7; Craig, Ouiatanon, p. 331.

<sup>41</sup> Cohokia, St. Philip, Prairie du Rocher, and St. Genevieve were smaller posts in Illinois established at this period. Monette, Valley of the Mississippi, Vol. I, pp. 166, 167.

<sup>42</sup> N. Y. Col. Docs., Vol. IX, p. 891.

<sup>43</sup> Margry, Vol. V, Letter of Cadillac, Aug. 31, 1703; Sheldon, History of Michigan, pp. 102, 150; Burton, Detroit under Cadillac, p. 14, Detroit, 1896.

striking contrast to the English method of displacing and removing to the most remote places possible such tribes as came in their way. Presents of goods and brandy were used by the French to draw the Indians to their posts<sup>44</sup> and numerous bands gathered around Detroit.<sup>45</sup> The influence of this policy was clearly to lower the character of the French colonists. Brought in close contact with the Indians, accustomed to their shiftless life, associating with them almost on an equality, the French early yielded to their vices and excesses.

Cadillac founded Detroit as a private mercantile adventure, but before the fort was completed the Company of the Colony of Canada obtained a monopoly of the trade.<sup>46</sup> This company paid heavy duties in France for its exclusive rights, while individual traders in Canada were restrained from selling to any but the company's agents.<sup>47</sup> In Detroit Cadillac regained for himself as commandant of the post the monopoly of trade in 1705.<sup>48</sup> From this time on the trade rights rested exclusively with the commandant who, in turn, frequently regranted these special privileges to individuals or companies.<sup>49</sup>

It was the policy of the French government to make such posts in the west self-supporting.<sup>50</sup> Similar efforts

<sup>44</sup> Many cases are given by Cadillac in his defense before Count Pontchartrain. Sheldon, Michigan, pp. 190-5.

<sup>45</sup> The Hurons settled near Detroit numbered 100 men; the Poutouatamies 180; the Outaouaes about 100 men; other tribes as the Oppenagos and the Miamis were represented. Cp. N. Y. Col. Docs. IX, 888; Sheldon, Michigan, pp. 190-5; Burton, Detroit under Cadillac, p. 14.

<sup>46</sup> Margry, Vol. V, pp. 135-250, 301-336, 360-367; N. Y. Col. Docs., Vol. V, p. 733; Mag. West. Hist., Vol. V, p. 66; Burton, Detroit under Cadillac, pp. 17-20; Farmer, Detroit, Vol. I, p. 765.

<sup>47</sup> N. Y. Col. Docs., Vol. V, p. 733; Sheldon, Michigan, pp. 93-98, 157; Mag. West. Hist., Vol. V, p. 66.

<sup>48</sup> Sheldon, Michigan, pp. 138-9; Burton, Detroit under Cadillac, p. 16.

<sup>49</sup> The Cass MSS. in Wis. Hist. Col., Vol. III, pp. 169-179; Sheldon, Michigan, p. 150; N. Y. Col. Docs., Vol. IX, p. 742.

<sup>50</sup> The Cass MSS., p. 167; N. Y. Col. Docs., Vol. V, p. 727; Sheldon, Michigan, p. 150; Burton, Detroit under Cadillac, pp. 7-8; and Turner, *The Wisconsin Fur Trade*, p. 31.

were made, not without success, to make the profits of the fur trade support even the minor exploring expeditions.<sup>51</sup> At Detroit the commandant was charged with the maintenance of the officers and soldiers of the fort together with the expense of an almoner, the surgeon and the medicine necessary to the sick, the transportation of provisions and clothing for officers and men, presents for Indians, a missionary, blacksmith and armorer. The equipment and clothing only were paid for by the government of France.<sup>52</sup>

The commandant's monopoly did not extend to "the little ordinary trade" with the Indians, to the exchange of such commodities as one might produce on his own land.<sup>53</sup> Only the commandant or those having licenses from him<sup>54</sup> could import merchandise for the Indian trade. The place of this trade in the royal economic policy toward the posts was set forth in the following declaration: "The Governor and other officers have but a scanty allowance from the King and could not subsist were it not by the perquisites they have from this trade. Neither could their priests find any means to satisfy their ambition and luxury without it. So that all heads and hands are employed to advance it (fur trade)."<sup>55</sup>

At the other posts of the French in Louisiana and New France a similar policy of merchant-company and commandant trade monopolies was pursued—at Vincennes, Ouiatanon, Kaskaskia, and elsewhere.<sup>56</sup> The effect of this policy of the French was harmful to the prosperity of the various settlements. Volney, a French traveler, visiting

<sup>51</sup> Margry, Vol. I, pp. 293-6; Vol. V, pp. 503-7; N. Y. Col. Docs., Vol. IX, p. 167; American State Papers, Vol. VI, p. 65.

<sup>52</sup> Cass MSS., Wis. Hist. Col., Vol. III, p. 167.

<sup>53</sup> Ibid., pp. 168-179.

<sup>54</sup> Traders paid from 400 to 500 livres per year for this privilege. Beckwith, Notes on the Northwest, p. 215. Henry, Travels and Adventures in Canada, 1760-1776, p. 173. Cass MSS., Wis. Hist. Col., Vol. III, pp. 168-179; Burton, Detroit under Cadillac, p. 8.

<sup>55</sup> N. Y. Col. Docs., Vol. V, p. 727.

<sup>56</sup> Jesuit Relations, Vol. LV, pp. 320-1; LXV, pp. 213-215, 225-9, 233, 237, 243-5, 272; Fraser's Report, Ind. Hist. Soc., Vol. II, p. 413; Monette, Valley of the Mississippi, Vol. I, pp. 162, 195, 238-9.

these posts in 1796 when the fruits of the French system were most apparent, wrote: "The nature of the government in some measure contributed to this; for at first when French and afterward when Spanish,<sup>57</sup> being purely military, the commanding officer is an aga or bashaw, who gives, sells, or takes away at pleasure, privileges of importation, exportation, purchase and monopoly of goods; so that there is no liberty of trade, or enjoyment of property and to enrich two or three families the rest of the inhabitants are rendered poor and destitute."<sup>58</sup>

The missions of the Northwest engaged alike in the fur trade, contributing in part to their self-support; and, in general, adopted the same business policy as the commandants had, letting for annual rentals the mission lands, and granting licenses for the exclusive rights of the mission forge or the mission store.<sup>59</sup> At the various military posts the church was virtually the property of the commandant, dependent entirely upon him for support. While the Company of the Colony of Canada held the monopoly of trade it supported the missionaries at its posts, paying each one 800 francs per year, with clothing and transportation.<sup>60</sup>

The posts of the Wabash country grew slowly in population. Ouiatanon never became more than a trading post and a fort for a military garrison. No land grants were made as at the other posts,<sup>61</sup> and there was lacking, in con-

<sup>57</sup> Volney is speaking of the Illinois settlements as well as Vincennes.

<sup>58</sup> Volney, Works, p. 371.

<sup>59</sup> Jesuit Relations, Vol. LXIX, pp. 241, 261, 267, 305; LXX, pp. 31-33; Margry, Vol. II, p. 251; N. Y. Col. Doc., Vol. V, p. 727; Turner, The Fur Trade in Wisconsin, p. 29; Parkman, The Old Regime in Canada, p. 328 ff.

<sup>60</sup> Cass MSS., Wis. Hist. Col., Vol. III, p. 167; Letter of Cadillac, Sheldon, Michigan, p. 102.

<sup>61</sup> In connection with this subject the terms of land grants at Detroit have considerable interest: "The grantee was bound to pay a rent of fifteen livres a year in peltries to the Crown forever; to assist in planting a May-pole, on each May-day, before the door of the Mansion House. He was forbidden to buy or sell articles of merchandise carried to or from Montreal, through servants, clerks or foreigners; to work at the business of a blacksmith; to sell

sequence, the permanence which is only possible where some system of land holding prevails.<sup>62</sup> George Croghan reported fourteen French families there in 1765.<sup>63</sup> At Miamis, the same authority reported nine or ten French houses and at Vincennes eighty or ninety families, while thirteen years later Hutchins found sixty houses. The two reports indicate probably no change in the population of the village for the two dates.<sup>64</sup> Hutchins described Detroit as "two long extended villages. The inhabitants, who are mostly French, are about 2000 in number; 500 of whom are as good marksmen and as well accustomed to the woods as the Indian natives themselves."<sup>65</sup>

It is always difficult to determine the exact population in a French post at any given time because of the constant going and coming of the trading expeditions. Colonists sent to these settlements soon grew discontented and set off for more remote points.<sup>66</sup> In 1708 of the sixty-three French settlers at Detroit only twenty-nine had taken lands, while thirty-four were traders. Nor does the proportion seem to have changed much later or at other posts.<sup>67</sup> Mechanics were seldom met in these frontier posts.<sup>68</sup> Agri-

brandy to the Indians, or to mortgage the land without the consent of the government. The Crown reserved all minerals and timber for military purposes. The grantor reserved the right of hunting rabbits, partridges, and pheasants. All the grain raised was to be ground at the manor wind-mill, where toll was to be given, according to the custom of Paris. On every sale of land a tax was levied, and the government reserved the right to take precedence of any buyer, at the price offered." Michigan Pioneer Collections, Vol. I, p. 352.

<sup>62</sup> Ouiatanon had no garrison after Pontiac's war and was practically abandoned. Craig, *Ouiatanon, Ind. Hist. Soc.* Vol. II, p. 334.

<sup>63</sup> Journal of Geo. Croghan, *Western Annals*, p. 102.

<sup>64</sup> Cp. Bonnecamp's Relation where he states that in 1749, he found at Miamis 22 Frenchmen in 8 huts which "only the desire of making money could make durable." *Jesuit Relations*, Vol. LXIX, p. 189, Vol. LXX, p. 235; Hutchins, *Topographical Description*, pp. 28-29.

<sup>65</sup> Hutchins, *Topographical Description*, pp. 28-29.

<sup>66</sup> *Jesuit Relations*, Vol. LXIX, p. 193.

<sup>67</sup> Sheldon, *Michigan*, p. 282. Monette, *Valley of the Mississippi*, Vol. I, p. 192.

<sup>68</sup> As an illustration of restrictions on mechanical pursuits: M.

culture or the fur trade supplied the colonists with their means of livelihood. The Illinois and Wabash posts were favorably situated for agriculture and considerable advance was made in this particular. Hutchins describing the settlement at Vincennes says: "They raise Indian corn, wheat, and tobacco of an extraordinary good quality—superior, it is said, to that produced in Virginia. They have a fine breed of horses (brought originally by the Indians from the Spanish settlements on the western side of the River Mississippi), and large flocks of Swine and Black Cattle. . . . Apples, Peaches, Pears, Cherries, Currants, Gooseberrys, Melons, etc. thrive well, both here, and in the country bordering on the River Ohio."<sup>69</sup> The same authority described the other posts of this region. His view of Detroit shows some attention to agriculture there. "For eight miles below and the same distance above Fort Detroit, on both sides of the river, the country is divided into regular and well cultivated plantations. . . . They raise large flocks of black cattle and great quantities of corn, which they grind by wind-mills, and manufacture into excellent flour."<sup>70</sup>

From the Wabash settlements, 600 barrels of flour were shipped to New Orleans in 1746.<sup>71</sup> Salt, beef, tallow, tar, fur, bear's grease, flour, and pork were regularly sent to New Orleans from the Wabash and Illinois settlements together.<sup>72</sup> But as in all French posts trade in agricultural products was very little encouraged.

The posts were built to promote the fur trade and to that industry the activities of the colonists were mainly limited.

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Parent complained that he was required to pay 600 francs, 2 hogsheads of ale, and agree to shoe all of Cadillac's horses for the privilege of engaging in the business of blacksmithing. *Jesuit Relations*, Vol. LXIX, pp. 241, 267; Vol. LXX, p. 33.

<sup>69</sup> Hutchins, *Topographical Description*, pp. 28-29.

<sup>70</sup> *Ibid.* pp. 49-50.

<sup>71</sup> Martin, *Louisiana*, Vol. I, p. 316; Monette, *History of the Mississippi Valley*, Vol. I, p. 166; *Mag. Am. Hist.* Vol. XXI, p. 394.

<sup>72</sup> *Jesuit Relations*, Vol. LXIX, p. 213; Monette, *History of the Mississippi Valley*, Vol. I, p. 221.

"The chief trade of Detroit consists in barter of coarse European goods with the natives for furs, deer skins, tallow, etc."<sup>73</sup> A well known contemporary writer says: "Around Detroit was one of the richest regions exploited by the fur traders." Another traveler wrote at Vincennes in 1765: "The great plenty of furs taken in this country induced the French to establish this post. . . . and by a very advantageous trade they have been richly recompensed for their labor."<sup>74</sup>

No effort was made to keep any account of the value of the fur trade carried on at the various posts and consequently any attempt to measure this is dependent wholly on occasional chance references. At Detroit 30,000 beaver were killed in the three years, 1701-4,<sup>75</sup> while out of the Wabash valley 20,000 skins were said to have been shipped in 1702. Three years later 15,000 hides and skins were sent out of the same region to one point, Mobile.<sup>76</sup> Thomas Hutchins estimated, in 1778, the annual output from Ouiatanon at £8000, and at Vincennes at £5000.<sup>77</sup> There is no doubt that, in most places, the French enjoyed a large fur trade,<sup>78</sup> and that there were enormous profits to the trader,<sup>79</sup> but the shiftless, dissolute habits of the traders and the demands on the commandants for presents to appease the Indians and the other requirements together with the corruption prevailing in official life from the lowest to the highest prevented the colonists generally from acquiring

<sup>73</sup> Hutchins, Topographical Description, pp. 49-50.

<sup>74</sup> Croghan's Journal in "Western Annals," p. 103.

<sup>75</sup> And this was at a time when every effort was being made to decrease the quantity of beaver furs taken and to increase that of other furs. The beaver market was regarded as over-stocked. Sheldon, Michigan, pp. 115, 152.

<sup>76</sup> Monette, History of the Mississippi Valley, Vol. I, p. 162; Mag. Am. Hist., Vol. XXI, p. 393.

<sup>77</sup> Hutchins, Top. Des., p. 29 ff.; Ind. Hist. Soc., Vol. II, p. 338.

<sup>78</sup> N. Y. Col. Docs., Vol. VII, p. 787; Vol. IX, pp. 152-160, 662, 954-8. Captain Rogers found in the store at Detroit, in 1760, \$500,000 worth of furs. Farmer, Detroit, Vol. I, p. 767.

<sup>79</sup> Cadillac offered 10,000 livres for the exclusive right to the fur trade at Detroit as early as 1703. Farmer, Detroit, Vol. I, p. 765; Mag. West. Hist., Vol. V, p. 68.

permanent wealth and in many cases even ruined the participants.<sup>80</sup> The life of the trader was one of strenuous activity for a short period followed by ruinous debauchery at the end of the season.<sup>81</sup>

The interior trade of the French found an outlet for exportation either at New Orleans or at Montreal. The trade of the upper Wabash posts<sup>82</sup> and Detroit went to Montreal either by way of Lake Erie and the St. Lawrence or by Lake Huron and the Ottawa river route.<sup>83</sup> Until the founding of Fort Niagara, 1726, it is quite certain the northern route was almost exclusively used.<sup>84</sup> But after that the two divided the traffic, with the lighter canoes following the northern route to avoid the uncertain waters of Lake Erie,<sup>85</sup> while the heavier followed its northern coast. The remainder of the lake-coast line was left comparatively unexplored until the expulsion of the French. A map by Charlevoix, as late as 1744, bears on the southern side of the lake the words, "This shore is almost unknown"; nor were the geographers of 1755 more accurate as to these waters.<sup>86</sup>

<sup>80</sup> Compare the failure of Crozat's monopoly. Monette, Vol. I, pp. 238-9. Jesuit Relations, Vol. LXIX, p. 189 ff.; N. Y. Col. Docs., Vol. V, p. 733; Sheldon, Michigan, pp. 150, 190-5, 316; Hinsdale, *Old Northwest*, p. 49.

<sup>81</sup> Jesuit Relations, LXIX, 193; N. Y. Col. Docs., IX, 154; Volney, Works, p. 374.

<sup>82</sup> In 1748 a treaty of peace between the English and the Miamis made this a safer highway for the English traders than for the French, but only five years later the French were able to reestablish themselves on friendly terms with the Indians and came again into active control of the region. The Indians made the portage a considerable source of profit to themselves by supplying traders with carts, pack-horses and a corps of Indians to assist in carrying canoes, furs, and merchandise around the portage, charging a commission for the service. Winsor, *Mississippi Basin*, pp. 243, 294; Journal of Capt. William Trent, p. 36; and Am. State Papers on Indians, Vol. I, pp. 576, 578.

<sup>83</sup> Jesuit Relations, LXIX, 253, 261, 305; LXX, 49; N. Y. Col. Docs., X, p. 183.

<sup>84</sup> Mag. West. Hist., Vol. V, p. 64; Turner, *The Wis. Fur Trade*, p. 21.

<sup>85</sup> Cadillac used the Ottawa route in going to Detroit, 1701, while Tonty went by the lakes in 1717. Mag. West. Hist., V, 64; Sheldon, Michigan, pp. 278, 316.

<sup>86</sup> Hinsdale, *The Old Northwest*, p. 28.

The relation between Detroit and Montreal as important trading centers is clearly stated in the following quotation: "The convoy was the great event of the year in colonial life at Detroit. It was the annual shipment from Montreal of the year's supplies, of the government's stores and money, and of the consignments of the factors and merchants at Montreal, Three Rivers, and Quebec to their correspondents at Detroit. . . . It was a fleet of trading canoes and batteaux with armed protection, and arrived during the month of September."<sup>87</sup>

The lower Wabash and Illinois settlements looked to New Orleans for their market.<sup>88</sup> Volney, visiting these places toward the close of the eighteenth century, wrote of life at Vincennes: "All their time, too, is wasted in prating, endless stories, insignificant adventures and journies to *town* to see their friends. That is to New Orleans, nearly five hundred leagues down the river. At Fort Vincent, they say of a man going to New Orleans, 'he is going to town,' as if they lived in one of its suburbs."<sup>89</sup>

When a journey was to be made from Montreal or Detroit to Kaskaskia or New Orleans, the traveler found his safest and easiest course by Miamis, Ouiatanon, and Vincennes.<sup>90</sup> From the latter point to Kaskaskia, two courses were available to him, both in use, one by the rivers and the other an Indian trail across over-land.<sup>91</sup> As early as 1699 De Iberville conducted a colony of Canadians from Quebec to Louisiana by way of the Maumee and the Wabash. Other colonists followed under the leadership of M. du Tessenet.<sup>92</sup> The French colonists of Canada dissatisfied with the rigorous climate of New France, seeking the more

<sup>87</sup> Jesuit Relations, Vol. LXX, p. 306 (note).

<sup>88</sup> Fraser's Report, Ind. Hist. Soc., II, 412; Mag. Am. Hist., XXI, 394; Monette I, 162.

<sup>89</sup> Volney, Works, p. 374.

<sup>90</sup> Documents Relating to the Settlements on the Wabash, Ind. Hist. Soc., Vol. II, p. 435.

<sup>91</sup> Ibid., Vol. II, p. 435.

<sup>92</sup> Memoir de la Marine et des Colonies, Beckwith, Notes on the Northwest, p. 97.

genial lands of Louisiana, made this their route. There was another route commonly in use by the French during the eighteenth century from Montreal by the Ottawa river, Post Michilimacinac, Lake Michigan, and the Illinois river. It is scarcely safe to make definite assertions concerning the relative importance of these two routes but, in general, it would seem that the Illinois route was the more important until the founding of the lower Wabash posts (1719-27), when the Wabash route took the first place. The trader and the missionary, the colonist and the traveler alike used it,<sup>93</sup> but it was the fur trader who made it historic.

The French and Indian war which broke out in 1754 was the culmination of a century of continual rivalry between France and England for the control of the Indian fur trade. These rivalries kept the border colonies in a constant foment.<sup>94</sup> The movement of the French up the St. Lawrence, by the upper lakes and into the Northwest simply lengthened the line of conflicting trade interests. The English left the Indian trade largely to individual enterprise, yet their adventures were none the less aggressive. Both parties employed the Indians in pushing their trade farther into the interior.<sup>95</sup> The Iroquois raids in the West were but one phase of this struggle. Their victories and alliances threatened for a time to drive the French entirely out of these regions. In this period the Iroquois Indians were truly the *coureurs des bois* for the English, penetrating the remote interior and returning laden with furs to the settlements on the Hudson.

When Detroit was founded the latter were attempting to win the Indians of those regions to friendly alliances,<sup>96</sup> and neither the French nor the English scrupled to incite

<sup>93</sup> Kaskaskia and its Parish Records, Fergus Hist. Col., No. 12, p. 12; Am. Antiq., Vol. II, pp. 125-6; Pouchot, Memoirs, Vol. I, p. 152; Dunn, Indiana, p. 57.

<sup>94</sup> N. Y. Col. Docs., Vol. IX.

<sup>95</sup> Ibid. Vol. IX, 160; Beckwith, Notes on the Northwest, pp. 215-6.

<sup>96</sup> Margry, V, 219; Sheldon, Michigan, p. 284.

the Indians against their rivals.<sup>97</sup> Wherever an expedition went there was always either a representative of its opponents already on the ground engaged in a friendly traffic with the Indians, or evidence of the recent departure of such an emissary.<sup>98</sup> The English were constantly inducing the Indians to bring their furs to the seaboard from the very midst of the French posts.<sup>99</sup> As M. Tonty journeyed from Montreal to his post at Detroit he met on Lake Ontario three canoes of Indians from Michil, three from Detroit and three from Saginaw which were going to Fort Orange. Two days later he met seventeen canoes of savages bound for the same place.<sup>100</sup> Two years later eight or ten canoes are reported at Fort Orange from the Miamis Indians.<sup>101</sup> Such facts show the reality of a trade war for the West during the entire eighteenth century.

The French and English first struggled for the possession of the strategic points along the Wabash line. The contest was a real one with this difference between the efforts of the two parties: the French attempts were backed by the home government, and forts and garrisons supported them, while the English relied on friendly alliances with the Indians and individual action of interested traders, the government at home giving them no support. The French fear that these individual plans were backed by the eastern colonies was the great incentive which drove them to occupy the Wabash valley.<sup>102</sup> The activity of the French government drew the Western boundary of the English colonies

<sup>97</sup> Cass MSS., Wis. Hist. Col., III, 161; Gist, Journals, pp. 50-51.

<sup>98</sup> Jesuit Relations, LXIX, p. 187; Sheldon, Michigan, pp. 284, 316; N. Y. Col. Docs., V, 726 ff., IX, 894, 1035; Margry, VI, p. 658; Gist, Journals, p. 224 ff.; Journal of Capt. Wm. Trent, p. 15; cp. Irving, Life of Washington, I, p. 48.

<sup>99</sup> The English made it of advantage to the Indians to bring them their furs. Jesuit Relations, Vol. LXVI, 173; LXVII, 127; N. Y. Col. Docs., IX, 408; cp. Mag. West. Hist., V, 68.

<sup>100</sup> Sheldon, Michigan, p. 316.

<sup>101</sup> N. Y. Col. Docs., IX, 894.

<sup>102</sup> Margry, Vol. V, p. 219; Vol. VI, pp. 657-8; N. Y. Col. Docs., Vol. IX, pp. 894, 1035, 1111; Journal of Capt. Trent, p. 15; Sheldon, Michigan, p. 284.

first along the line of posts from Detroit to Vincennes, and then began anew another battle with the opponents for the Ohio country. From 1727 to 1750 the contest was thus narrowed to the region south of Lake Erie. The English made Pickawillany, an Indian village at the mouth of Loramie creek, a centre of their Ohio traffic<sup>103</sup> and were engaged north and south of the Ohio river in a lucrative fur trade.

Toward the close of this period the contest grew more intense. The Wabash posts were starting points for a constant stream of French traders going to the Ohio country; while on the other hand, the organization of the Ohio company in 1748 gave the English adventurers what they had long lacked, a political and financial backing.<sup>104</sup> The company's store-houses became invaluable centers for trade, and resulted in giving a new impetus to their interests in the West. Christopher Gist was sent into the valley of the Ohio to explore the country and to win the Indians to the English. On the other hand, De Celeron set out in 1749 on an exploring expedition in the interest of the French government.<sup>105</sup> He traversed the region from the Alleghany mountains to Detroit, depositing medals at strategic and important places as an act of taking formal possession of the Ohio country for the king of France. Such was the trend of affairs in the West when the French by a sudden movement drew the western boundary line for the English at a new series of military posts extending from the east end of Lake Erie to the headwaters of the Ohio. This began the war for the great interior valleys.

After the English had wrested from the French their settlements in America, the Wabash posts languished from

<sup>103</sup> Jesuit Relations, Vol. LXIX, pp. 187, 299; N. Y. Col. Docs., Vol. IX, p. 1105; Margry, Vol. VI, p. 657 ff.; Gist, Journal, p. 48; Wis. Hist. Col. Vol. VII, pp. 123-187; Parkman, Montcalm and Wolfe, Vol. I, pp. 51, 52, 83-5.

<sup>104</sup> Gist, Journals, pp. 35, 37, 44, 48, 224-5.

<sup>105</sup> Gist, Journals, pp. 50, 51, 224, 225; Jesuit Relations, Vol. LXIX, p. 151 ff.

the effect of the sudden withdrawal of the patronage of the French government. "Left almost to themselves, in the midst of deserts, a hundred and fifty miles from the nearest post on the Mississippi, without any taxes to pay and at peace with the savages, they spent their lives in hunting, fishing, trading in furs, and cultivating a little corn and a few vegetables for their families."<sup>106</sup> All evidence goes to show a collapse of any considerable fur trade in these regions during the exciting years attending the series of wars which began in 1754 and which did not end until the peace which followed the overwhelming victories of Mad Anthony Wayne in 1794. The French settlers of Vincennes "had nothing to live on but their fruit, vegetables, potatoes, Indian corn and once now and then a little game. No wonder therefore they became as lean as Arabs." Such testimony is good evidence of the lower state of trade in these regions under English occupation. The Wabash route was used by the British in their occasional military expeditions back and forth between Detroit and Vincennes,<sup>107</sup> and the portage at the Miamis post became of such importance that carts were regularly employed to transport boats and merchandise from the Miami to the Wabash river.<sup>108</sup>

The Wabash trade route passed within the jurisdiction of the United States under the terms of the treaty of 1783 with Great Britain, but severing the political bonds connecting it with the St. Lawrence valley deprived it of any great significance as a highway, until emigration had gone far enough to make better facilities for transportation in the West imperatively necessary. The history of the response to that demand is the history of the origin and operation of the Wabash canal. With the coming of the United States into these valleys passed the days of the French régime, and of the Indian fur trade.

<sup>106</sup> Volney, Works, p. 370, 371.

<sup>107</sup> Major Bowman's Journal, in appendix to "George Rogers Clark's Campaign," p. 110, Cincinnati, 1869; Journal of Joseph Buell, 1785-6, in Hildreth, Pioneer History, p. 140.

<sup>108</sup> Hutchins, Topographical Description, p. 30.

## CHAPTER II

### THE WABASH AND ERIE CANAL

#### THE ORIGIN AND FEDERAL CHARACTER

It is scarcely necessary to discuss at length the various theories concerning the origin of the canal. Nature had too clearly fitted the marshy headwaters of the Wabash and Maumee rivers for a connecting waterway to make a study of the evolution of such an idea of any historical value. The lengthening and shortening of the portage with the changes in the seasons must have suggested the scheme to every traveler over this swampy pass, whether French or English.<sup>1</sup>

In the Ordinance of 1787 the United States had reserved this carrying-place to its citizens for a common highway free from any tax, imposts, or duty.<sup>2</sup> This action was an official recognition of the value of the waterway and a placing of the seal of the Federal government upon it as a national roadway. General Washington pointed out in 1784 in a letter to Benjamin Harrison the necessity of cementing the East and West by lines of communication,<sup>3</sup> and again in the same year in a letter to Richard Henry Lee, President of Congress, suggested the advisability of a survey of the waters of the territory north of the Ohio

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<sup>1</sup> When General Hamilton was encamped at the eastern terminus of the portage on his expedition to Vincennes 1778, he wrote of this fact: "By damming up the water of this *petite riviere* four miles below the landing, the water is backed and raised an inch here. At the Dam it rose an inch the first hour. The Beaver had worked hard for us, but we were obliged to break down their dam to let the Boats pass that were sent forward." See Hamilton to Haldimand, Nov. 1, 1778, Haldimand Collection Canadian Archives; also Documents in Ind. Hist. Soc., II, p. 436.

<sup>2</sup> Ordinance of 1787, Art. IV.

<sup>3</sup> Washington, Writings, Vol. IX, p. 445 (Sparks ed.).

river for lines of communication.<sup>4</sup> His plan was a canal, but a canal that should ultimately connect Lake Erie and the western territory with the projected Potomac canal and thus bind the western trade to Virginia.<sup>5</sup> In another place Washington suggested in a letter to Henry Knox, his Secretary of War, the strategic importance of the head of the Maumee river and prophesied the connection of the waters of Lake Erie with the Mississippi.<sup>6</sup>

There is also a tradition that Quaker missionaries, while establishing an agricultural school among the Indians around Ft. Wayne,<sup>7</sup> urged the advantage of a canal. The idea was in the air. Perhaps the most definite and widely known of these early opinions was that of Captain McAfee. He wrote, "The Maumee is navigable for boats from this place to the lake and the portage to the nearest navigable branch of the Wabash is but seven or eight miles through a level, marshy prairie from which the water runs both to the Wabash and to the St. Marys. A canal at some future day will unite these rivers."<sup>8</sup>

But for something more than an expression of opinion we must look to Captain James Riley, a deputy United States Surveyor, who was sent to Ft. Wayne in 1818 to make a preliminary survey of the lands in this region which were soon to be opened for settlement. He suggested the importance of a canal which he thought could very easily be cut with a length not to exceed six miles, and the following year ran a line of levels over the portage from the St. Marys to Little river. His recommendation communicated to his superior, Ed. Tiffin, Surveyor General, became

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<sup>4</sup> Washington, *Writings*, IX, p. 80.

<sup>5</sup> *Ibid.*, IX, 303, 327; Ward, *Chesapeake and Ohio Canal*, Johns Hopkins University Studies, 17th Series, Chapter I.

<sup>6</sup> June 18, 1785, Washington, *Writings* (Sparks ed.), IX, p. 108. But here again his object is evidently to extend his Potomac route via Lake Erie westward into the Wabash and Illinois country.

<sup>7</sup> 1804.

<sup>8</sup> Captain McAfee, *History of the Late War in the Western Country*, p. 127, Lexington, Ky., 1816.

a part of the official records,<sup>9</sup> and by the action of the latter was brought to the notice of Congress. Further surveys later established the feasibility of the plan. The origin of the canal, however, must be sought in a combination of forces. Other causes than the speculation of military experts united to make it a practical necessity.

Peter Buell Porter,<sup>10</sup> a representative in the eleventh Congress from western New York, became the champion of a system of roads and canals to connect the West with the East. He pointed out the need of markets in the West and showed the moral effect of the idleness resulting where there was no incentive to work because of inadequate markets. His remedy was a canal from the Mohawk to Lake Ontario; a canal around the falls of the Niagara; a canal from the Cuyahoga to the Muskingum, and another around the falls of the Ohio at Louisville. He included in his plan the construction of a canal across the Wabash portage, closing his arguments with the following resolution:

“That a committee be appointed to examine into the expediency of appropriating a part of the public lands, or of the proceeds thereof, to the purpose of opening and constructing such roads and canals as may be most conducive to the general interests of the Union.”<sup>11</sup> This plan was in continuation of the more famous movement represented by Gallatin’s report<sup>8</sup> of 1808. But at this time stress of war turned Congress from any course looking to internal improvements. After the close of the War of 1812 and the European wars the commercial depression which followed drove multitudes to seek new homes. The seaboard could no longer furnish the returned soldier nor the ruined mer-

<sup>9</sup> Helm, History of Wabash County, p. 67. A similar recommendation as a result of surveys found its way to Congress in 1819. American State Papers, Vol. XXI, 555.

<sup>10</sup> Porter was also a member of the firm of Porter, Barton and Company, which enjoyed the monopoly of the carrying-trade along the Niagara river from Lakes Ontario to Erie.

<sup>11</sup> Annals of Congress, 1809-10, p. 1401, Feb. 9, 1810. Speech of Peter Buell Porter in Congress on Internal Improvements.

chant with adequate opportunities.<sup>12</sup> This led to a rush of the people into the new country beyond the mountains, and the westward movement gave, in turn, an immediate demand for highways of transportation. It was soon found that except along the navigable waterways or artificial roadways products of the soil could not be marketed beyond a radius of about one hundred and fifty miles.<sup>13</sup> The cost of transportation on longer distances destroyed all the profits. Thus there came back from the new settlements of the West a demand for aid in creating artificial lines of communication. The rapidity with which new regions were occupied and the wide extent covered in the settlements prevented the states from undertaking the building of adequate roads and channels for this trade. An eminent historian asserts that "The heaviest taxes that could have been laid would not have sufficed to cut out half the roads or build half the bridges, or clear half the streams necessary for easy communication between the new villages and for successful prosecution of trade and commerce."<sup>14</sup>

Already a rude line of water and land transportation between New York and the West was in use. Freight was taken up the Hudson to Albany. Then for fifteen miles over a good turnpike to Schenectady. Up the Mohawk by a scow steered by a sweep oar and pushed up the stream by man-power. Around Little Falls in the Mohawk by a canal and eight locks. From Utica to Lake Oneida by a canal and Wood creek, through Lake Oneida to the Onondaga and Oswego rivers into Lake Ontario; thence, along Lake Ontario to Lewiston where the Porter, Barton Transportation Company took it overland along the Niagara river. At Black Rock, it was delivered to a fleet of steamers plying on Lake Erie. Thence, by land over the portage to old Fort Boeuf, and once more by water to Pitts-

<sup>12</sup> McMaster, Vol. IV, pp. 382-3.

<sup>13</sup> Ibid., III, p. 464; *The Central Water-Line from the Ohio River, Pamphlet*, Richmond, Va., 1868.

<sup>14</sup> McMaster, III, p. 461.

burg, and down the Ohio to the various points of distribution. This was the cheapest way then possible. One hundred thousand bushels of salt annually passed westward from central New York.<sup>15</sup> The route as a whole bore the same relation to New York trade that the overland route from Philadelphia to Pittsburg did to Pennsylvania.<sup>16</sup> Certainly the greater part of the travel and commerce up to this time followed the mountain routes from Philadelphia, Baltimore or Alexandria but of the several routes freight could be carried slightly cheaper from New York to Pittsburg by the northern way.<sup>17</sup> If the Hudson route was to have any commercial importance, there was great need of shortening it and eliminating the portions of land carriage,<sup>18</sup> and several had pointed out the way.

Together with the economic factors voiced in the demand for national aid in constructing roads and canals, there was a strong military need. The experience of the Northwestern campaigns of the War of 1812 had demonstrated the futility of military operations with inadequate means of transporting troops and supplies. These expeditions were almost invariably failures due to defective transportation. A national military highway across the Old Northwest was

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<sup>15</sup> John Palmer, *Journal of Travel in the United States*, London, 1818. McMaster, Vol. III, pp. 480-1. Winsor, the Westward Movement, p. 506.

<sup>16</sup> It is noteworthy that whether the journey began at New York, Philadelphia, or Baltimore, the Western terminus was more often Pittsburg. The Erie and Michigan portages had relatively declined in importance due to the unsettled status of Indian affairs in these localities and the proximity of the not too friendly British settlements of Canada and the frontier.

<sup>17</sup> The great commercial routes to the Western country at this early period and indeed till the construction of the Erie canal and the various canals of the Northwest were as follows:

(A) One starting from Philadelphia reached by different portages the Alleghany river.

(B) and another route leaving either Baltimore or Alexandria passed from the Potomac to the Monongahela. Both centered at Pittsburg from whence the common way led down the Ohio river.

<sup>18</sup> This early route between the chain of rivers and lakes across New York as such attained to no great commercial importance. Its main significance lies in the fact that it pointed the way for the Erie canal. See Poor's Railroad Manual, 1881, p. 6.

demanded. In Congress this motive was doubtless the deciding factor, yet a less creditable force had its place in winning support. The policy of harbor appropriations had already had its beginning.<sup>19</sup> Sectional jealousies now compelled the national government to distribute its wealth in money and lands among the western states demanding canals and roads to counterbalance the Atlantic seaboard clamoring for harbors and ships.<sup>20</sup>

The sentiment demanding a system of internal improvements was particularly strong in the central and northern part of the then sparsely settled state of Indiana.<sup>21</sup> Governor Jennings<sup>22</sup> in his message to the state legislature in December, 1818, urged the consideration of a system of canals and roads to facilitate commerce and enhance the value of the soil. A system of roads and canals invites, he said, "To a more general intercourse between the citizens; which never fails, in a great measure, to remove the jealousies of local interests, and the embittered violence of political feuds, which, too often, produce the most undignified results to our republican institutions."<sup>23</sup>

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<sup>19</sup> Improvements of Harbors by Federal Government began in 1822. Annals of the American Academy of Political and Social Science, Sept., 1893, p. 111. Cp. Harbor bills for military purposes, Annals of Congress, 1797, p. 24 and p. 324.

<sup>20</sup> The first step in this direction was taken when Congress by the act of April 30, 1802, gave one-twentieth of the net proceeds of the land sales in Ohio to be used for a system of roads to connect with the Atlantic seaboard. Another act of March 3, 1803, gave 3 per cent of this fund to the state to use for roads within its limits. This policy was continued in other states. Donaldson, *Public Domain*, pp. 257-8.

<sup>21</sup> Schoolcraft, *Travels in Central Portions of the Mississippi Valley*, 1821, pp. 90-91. This author examined the locality with the object of furnishing the public with information at a time when interest was running high.

<sup>22</sup> Major Stickney, Indian agent in Indiana, had a part in stimulating the public authorities to action. In a MS. of 20 pages, he communicated his views on a canal to some gentlemen in Cincinnati, carried on a lengthy correspondence with Governor Clinton, of New York, and Governor Jennings, of Indiana. See the autobiography of Major Stickney printed in "Early History of the Maumee Valley," H. L. Hosmer.

<sup>23</sup> House Journal, Session III, p. 21.

In 1822 the states of Indiana and Illinois conjointly made provision for the improvement of the Grand Rapids of the Wabash river.<sup>24</sup> This was a definite step toward the development of the Wabash route as something more than a waterway for canoe trade. Both legislatures, during their sessions of 1823, again considered the subject of connecting the Maumee with the Wabash by canal.<sup>25</sup> Governor Hendricks of Indiana in his message of December, 1822, having in view the further improvement of the Wabash river for navigation, had urged that the state should husband its resources "for the great work to be done."<sup>26</sup> A year later the same governor reported to his legislature a communication from the Illinois board of canal commissioners wherein attention was called to the importance of connecting the navigation of the Wabash and Maumee rivers by a canal.<sup>27</sup> Public opinion was doubtless correctly expressed when a local newspaper said: "Not only would our markets improve from the facilities to send off our produce, cash flow in, instead of out, as is the case now, and merchandise be cheaper, but the whole section of country from here to the Lake, which is now scarcely less than a wilderness, would become a thickly populated region, of enterprise, industry and happiness."<sup>28</sup>

Ever since the admission of the state of Indiana into the Union, the canal project had been a favorite subject before the legislature. But the state lacked the means even to make the surveys necessary to test the practicability of the canal,<sup>29</sup> and the movement was of necessity carried to the Federal Congress, a body just then beginning to show itself ready to aid such enterprises. Indiana's representatives in Congress united their efforts to secure a land grant

<sup>24</sup> Dillon, History of Indiana, p. 569.

<sup>25</sup> *Ibid.*, p. 569.

<sup>26</sup> *Ibid.*, p. 570.

<sup>27</sup> House Journals, 8th Session, p. 12, Dec. 2, 1823.

<sup>28</sup> Lafayette Mercury, March 20, 1834.

<sup>29</sup> Indiana Executive Documents, No. 32, p. 12.

for this purpose.<sup>30</sup> The battle for internal improvements by Federal aid was a long one.<sup>31</sup> More than a decade of discussion followed ere it arose in triumph as the American System of Clay, Calhoun, and Adams,<sup>32</sup> and in this parliamentary struggle the Wabash and Erie canal project became one of the measures toward which both sides of the controversy directed their strongest arguments. The contest began with the introduction in 1822 of a bill which provided an appropriation for the survey of routes best fitted for a series of canals and roads.<sup>33</sup> The measure was defeated and the same fate met it upon its re-presentation the following session.<sup>34</sup> However, the friends of western internal improvements secured in 1824 \$30,000 with which to make a series of surveys.<sup>35</sup> No routes were specified, though in the debates Senator Thomas Hart Benton had strongly presented the natural advantages of the Wabash route.<sup>36</sup>

More definite action had in the meantime begun in the lower House. Mr. Jennings, a representative for Indiana, reported on January 23, 1823, from the Committee on Public Lands, a bill to authorize the state of Indiana to open a canal through the public lands for the purpose of connecting the Wabash and the "Miami of Lake Erie."<sup>37</sup> It called for no further aid than the right of way, but was generally

<sup>30</sup> Very credible sources show that the definite project for a canal by Federal aid had its origin in the individual enterprise of Samuel Hanna and David Burr. At their urgent representations, the services of the state delegation in Congress were enlisted in behalf of the plan. *The Life and Character of Samuel Hanna*, G. W. Wood, p. 16.

<sup>31</sup> For a brief history of the movement see Ward, *Early Development of the Chesapeake and Ohio Canal*, Chapters II and III. Johns Hopkins University Studies, Seventeenth Series.

<sup>32</sup> From Gallatin's Report in 1808 to the close of Monroe's administration little more than the presentation of various projects was accomplished. Schouler, Vol. III, pp. 247, 295, 337.

<sup>33</sup> *Annals of Congress*, II, p. 1682, April 10, 1822.

<sup>34</sup> *Ibid.*, p. 340, December 10, 1822.

<sup>35</sup> *Ibid.*, I, p. 570, 1823-4.

<sup>36</sup> *Ibid.*, Vol. I, p. 534.

<sup>37</sup> *Ibid.*, 1822-1823, p. 667.

regarded by the representatives from Indiana as the entering wedge finally to secure a land grant from Congress.<sup>38</sup> No action was secured until near the close of the session following. Mr. Rankin had reintroduced Mr. Jennings' measure early in the session,<sup>39</sup> and the General Assembly of Indiana joined with a memorial asking aid from Congress.<sup>40</sup> In May Mr. Rankin's bill was considered in both houses.<sup>41</sup> The measure asked for a right of way of 90 feet on each side of the canal. It was regarded, accordingly, as a request for a Federal land grant to a state for purposes of internal improvement, though the tract of land was to be reserved to the state and used for no other purposes. In the debates it was argued that this was a land grant worth \$500,000,<sup>42</sup> whereas, the estimated cost of the canal was only \$300,000.

The Committee on Public Lands reported most favorably to the work itself but opposed a grant of land unless this canal should be included in a general system of internal improvements, and preferred a money grant if any aid should be given. In the open debate in the House an attempt was made to substitute, for the reservation of 90 feet on each side, a strip of one mile on each side. In opposition to such an amendment, it was argued that such a grant was "trenching on the terms of the cession of the Northwestern territory by Virginia to the United States which declared that the whole of that cession should be a fund for the payment of the common expenditures of the United States." "The canal was a local work and not one of the common expenditures of the United States."<sup>43</sup> The friends of the work adverted to the frequently presented argument that on the contrary such a public work would immensely enhance the value of the public lands

<sup>38</sup> Tippecanoe Journal and Free Press, Sept. 29, 1842.

<sup>39</sup> Annals of Congress, 1823-4, p. 829.

<sup>40</sup> Ibid., 1823-4, p. 1083.

<sup>41</sup> Ibid., 1823-4, Vol. II, p. 2601.

<sup>42</sup> Ibid., p. 2601.

<sup>43</sup> Ibid., p. 2600.

and thus prove a compensation to the general government. The opinion of Washington favorable to the improvement of this water communication was presented.<sup>44</sup> Finally, the original bill, with a slight amendment requiring the survey to be finished in three years, passed both houses.<sup>45</sup> The expense of surveying and constructing was thrown wholly on the state, if any action were taken. It remained to be seen whether the state desired to undertake such a work at its own expense.

Somewhat earlier, Congress, in the enabling act providing for the admission of Indiana into the Union, had granted to the state three per cent of the net proceeds of the public lands to "be reserved for making public roads and canals" under the direction of the legislature.<sup>46</sup> This fund served as a nucleus for some indirect state action. A part of this money was appropriated in 1824<sup>47</sup> to improve the commerce on the Wabash river,<sup>48</sup> and the state's obligation to carry out the act just passed by Congress was urged by Governor Ray.<sup>49</sup> "Our waters must be imprisoned in new channels and made to subserve the essential purpose of commerce," he said,<sup>50</sup> and reported to his legislature that surveys and estimates were just completed by the general government which proved the practicability of

<sup>44</sup> Annals of Congress, 1823-4, Vol. II, p. 2601.

<sup>45</sup> Passed House, May 13, 1824; Senate, May 26, 1824; Annals of Congress, 1823-4, p. 788, Vol. II, p. 2613.

<sup>46</sup> Acts of Congress, Sec. VI, Cl. 3, April 19, 1816.

<sup>47</sup> Act of Jan. 31, 1824. Laws of Indiana. The whole income from this three per cent fund could have done little toward such an undertaking. For the first seven years it yielded: 1816, \$7673.80; 1817, \$9762.91; 1818, \$7935.03; 1819, \$4661.87; 1820, \$12,595.85; 1821, \$20,557.84; 1822, \$8762.78. Am. State Papers, Vol. 18, p. 717. Nor had the fund become very valuable 10 years later. In 1835, it amounted to \$20,105.00 and for 1835, \$24,398.00. House Journals, 19 Sess., p. 12 and 20 Sess., p. 15. The fund was finally distributed among the counties to be used for improvement of roads. Act of Feb. 6, 1837. A total of \$575,547.75 was paid into this fund. Tenth Census, VII, 618.

<sup>48</sup> The Wabash river is to be regarded as a component of the Wabash and Erie waterway.

<sup>49</sup> Message, Dec. 8, 1826, Indiana House Journal, No. 11, p. 32.

<sup>50</sup> Ibid., p. 44.

a canal connecting the waters of the Maumee with the Wabash and following the valley of the latter stream.<sup>51</sup> Such a work, he continued, would be a step to the relief of the hard times.<sup>52</sup> Arguments were accumulating. The Erie canal had just been completed and had opened a navigable water line from New York to Chicago. To profit by this outlet the western states lying along the lakes were desirous of constructing channels to connect with it the more remote portions of their territory.<sup>53</sup> Ohio had begun its comprehensive system. The fever, if this intense demand for increased facilities of trade may be so called, was spreading westward. Governor Clinton of New York had had a part in stimulating Ohio into action.<sup>54</sup> The answer on the part of Indiana to this demand was that the state lacked means. Doubtless the state authorities as a whole had no intention of constructing it without the aid of the general government,<sup>55</sup> and took no step toward acting under the Federal authorization of 1824.<sup>56</sup>

Independent, however, of any action for direct aid to the canal, the United States government had been making surveys in the western territory. In addition to the \$30,000 appropriated in 1824, \$50,000 more was added March 25, 1826, for the purpose of examining a series of canal routes and turnpike projects.<sup>57</sup> At the same session a bill was introduced into Congress asking for a land grant to aid the state of Indiana in the construction of the Wabash and Erie canal. The plan was to appropriate a quantity of land equal to six sections in width on both sides throughout the entire length. The state was to use the proceeds of these lands in the construction and maintenance of the

<sup>51</sup> Message, Dec. 8, 1826, Indiana House Journal, No. 11, p. 47.

<sup>52</sup> Dillon, History of Indiana, p. 570.

<sup>53</sup> Andrews, Report on Colonial Trade, p. 306, Washington, 1854.

<sup>54</sup> Hosmer, Early History of the Maumee Valley; E. E. Sparks, Expansion of the American People, p. 268.

<sup>55</sup> Congressional Debates, Vol. II, Part I, 1825-6, p. 590.

<sup>56</sup> Donaldson, Public Domain, pp. 257-8.

<sup>57</sup> United States Statutes at Large, Little and Brown edition, Vol. IV, p. 151.

canal.<sup>58</sup> The bill returned from the Committee on Roads and Canals early in the session, but final action upon it was postponed until the measure was crowded over for the following season.<sup>59</sup> In the debates in Congress at this time the strongest opposition arose from the indefiniteness as to the amount of land necessary. Various opinions were expressed as to the length of the canal to be constructed. One estimate was that a cut across the summit level, a distance of about seven miles, would be sufficient. Another extended the canal to the Little Wabash, twenty-five miles below. Others, to the mouth of the Tippecanoe river, one hundred miles down the Wabash. Mr. Hendricks, the leading supporter of the bill and Senator from Indiana, probably expressing the sentiment of the canal's friends, was of the opinion that the canal should extend fifty miles to the mouth of the Mississinaway river.<sup>60</sup>

Mr. Hendricks in his speech in the Senate April 20, 1826, in defense of the bill spoke at length upon the benefits to accrue to the Union from this canal as a military route. The experience of the forces under General Harrison in the war of 1812 was cited in evidence of the value of such a highway. Such a grant would be expedient as enhancing the value of the other lands to an extent sufficient to reimburse the government. It was claimed that this last had been the motive of all the Federal land grants.<sup>61</sup> The opponents of the measure replied, "Let Indiana construct

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<sup>58</sup> Congressional Debates, 1825-6, Vol. II, Part I, p. 705.

<sup>59</sup> Ibid., 1825-6, p. 590-7.

<sup>60</sup> These estimates became of interest in view of the later controversies over the location of the terminus. After fixing this for a time at the mouth of the Tippecanoe river, it was extended a few miles below to Lafayette, only in turn to be carried down to Terre Haute. Finally, abandoning the attempt to make the Wabash river a part of the waterway, Evansville on the Ohio was selected as the ultimate terminus. The indefiniteness of the bill on the terminal points of the canal was due to the scant information available upon the navigability of the Wabash and the Miami rivers. Letter of Governor Noble to Hon. James Whitcomb, Commissioner General Land Office, dated Nov. 12, 1837. Executive Docs., 1837, No. 32, pp. 12-13.

<sup>61</sup> Congressional Debates, Vol. II, Part II, 1825-6, pp. 590-7.

her own roads and canals as Pennsylvania has made hers." The defense easily showed the falsity of such an argument. Pennsylvania's resources were her public lands; in Indiana no such resource existed, for the general government owned the public lands. This condition deprived the new states of such resources as all the older states had and was held to be a valid reason why the new states should receive aid. It was held that the United States should foster domestic commerce equally with foreign.<sup>62</sup> But final action was postponed for the session of 1825-6 pending further information from the surveys being made in the west.<sup>63</sup>

Early in the following session, the subject was again presented. In the Senate the Committee on Public Lands was directed to inquire into the constitutional power of Congress to dispose of the public lands, and into the justice and expediency of appropriating portions of these domains to the states for constructing canals.<sup>64</sup> The resolution met with defeat rather because of the strong feeling that it would cause needless delay, and be only an expression of the opinion of a few when completed. Mr. Harrison said in the debates in the Senate that no similar project promised to be more beneficial to the western country as it would open the West to the markets of New York. Mr. Smith of South Carolina opposed it as inaugurating a general system of land grants and as an indefinite donation. The bill was amended in the Senate to satisfy certain of these conflicting elements.<sup>65</sup> Instead of six sections in width, three on each side, it was made to give the alternate sections for five miles on each side, reserving the remaining sections to the United States.<sup>66</sup> This reduced slightly the amount of the grant and was calculated to greatly enhance the value of the portion remaining to the

<sup>62</sup> Congressional Debates, Vol. II., Part I., p. 597.

<sup>63</sup> See Speech of Mr. Chandler, Feb. 9, 1827. Congressional Debates, Vol. III, p. 310, 1826-7.

<sup>64</sup> Congressional Debates, 1826-7, Vol. III, pp. 7-12.

<sup>65</sup> Feb. 13, 1827.

<sup>66</sup> Congressional Debates, 1827, Vol. III, pp. 310-318.

United States. Other amendments in the Senate made it incumbent upon the state to commence the canal in five years. The measure did not come up before the House for final action until one day before the close of the session, March 2, 1827, and passed at midnight of that day.<sup>67</sup> Fortunate it was for the success of the project that it passed at this session. The next Congress was composed of Jackson men opposed to internal improvement.<sup>68</sup> This project originated a third and distinct phase of Federal aid for canals and roads. In 1806 Congress began a system of direct appropriations of money for the National road from Cumberland westward,<sup>69</sup> and in 1825, authorized stock to be taken in the Chesapeake and Delaware Canal Company and three years later subscribed stock to the Chesapeake and Ohio canal.<sup>70</sup> The Wabash appropriation<sup>71</sup> took the form of a Federal land grant in aid of a state public work.<sup>72</sup>

#### ORGANIZATION AND CONSTRUCTION AS AN INTERSTATE ENTERPRISE

During the consideration of the canal bill in Congress the canal had been planned wholly as an Indiana work. The grant was made to the State of Indiana, for the navigable point of the Maumee was supposed to be within its limits. The actual examination by surveys soon made it apparent that the canal must extend for some distance into Ohio, and accordingly Congress authorized Indiana to convey to Ohio the lands within the limits of the latter to

<sup>67</sup> Congressional Debates, 1826-7, p. 1496.

<sup>68</sup> Letter of Judge Test, Sept. 29, 1842, Tippecanoe Journal. Test was Representative from Indiana from 1823 to 1831.

<sup>69</sup> Annals of Congress, 1806-7, p. 1238.

<sup>70</sup> Annals of Congress, 1825, pp. 686-7; Ward, Chesapeake and Ohio Canal, p. 86.

<sup>71</sup> A similar grant on the same day was made to Illinois for a canal to join the Illinois river with Lake Michigan, and May 24, 1828, to Ohio to extend the Miami canal.

<sup>72</sup> Donaldson, Public Domain, p. 258.

be used by it in constructing its portion of the canal.<sup>1</sup> Indiana accepted the portion of the grant in its bounds in 1828 and by the same acts took steps looking to the ultimate construction of the canal. A board of three commissioners<sup>2</sup> was elected by the legislature for a term of two years,<sup>3</sup> and paid out of the "debt due from the state to the road and canal fund."<sup>4</sup> The commissioners were authorized to locate the canal with such terminal points on the Wabash and Maumee as might seem advisable from the surveys made by the general government, to select the lands donated, and to ascertain whether funds could be obtained on a pledge of the lands granted. The board was reorganized in 1830 and one of the three members was designated as the Commissioner of the Canal Fund, another as Commissioner of Contracts, and the third as the Commissioner of Accounts. In addition, the office of Chief Engineer was created.<sup>5</sup>

Governor Ray had recommended that the funds should be secured by a loan or an issue of paper money redeemable in land at a minimum price when the land should be offered for sale. His plan was to have the completed work enhance the value of the land.<sup>6</sup> The task of providing ways and means was taken up by the state legislature at its session in 1830.<sup>7</sup> Timber, stone, and other material upon the canal lands suitable for use in the construction of the canal and locks were reserved. The state asked for the alternate sections reserved by Congress, but met with a refusal.<sup>8</sup> Little progress toward definite work was made for several years because of delays over minor

<sup>1</sup> United States Statutes at Large, Vol. IV, p. 306.

<sup>2</sup> Samuel Hanna, David Burr and Robert John were the first members of the canal board.

<sup>3</sup> The term of office was made three years in 1830.

<sup>4</sup> This refers to the proceeds of the three per cent fund.

<sup>5</sup> Session Laws, 1829-1830, Ch. VIII, pp. 13-18.

<sup>6</sup> House Journals, No. 12, p. 19; Niles' Register, Jan. 12, 1828, Vol. 33, p. 322.

<sup>7</sup> Session Laws, 1829-30, Ch. VIII, pp. 13-18.

<sup>8</sup> Senate Documents, No. 62, 3rd Congress, 2nd Sess., Vol. III.

details of organization. It was currently believed that the delay in beginning the actual work of construction was due to "some divisions of opinion respecting the comparative utility of canals and railroads."<sup>9</sup> That question was, indeed, carefully canvassed. Governor Ray called the legislature's attention to the fact that it might be advisable to construct a railroad instead of a canal from the proceeds of the grant.<sup>10</sup> Two years later his conviction was stronger when he urged that a railroad would cost less than one-half as much as a canal.<sup>11</sup> The canal commissioners, on the other hand, set forth the arguments which probably turned the scales for a canal. Canals require "labor and such material as this state affords; the latter (railroads), iron, which constitutes a large item of expense, must come from abroad."<sup>12</sup>

There was in favor of canals their long tested usefulness and success in England and the older states.<sup>13</sup> Nothing depended upon experiment and conjecture. As a boat did not exceed greatly the cost of a wagon, the canal satisfied the masses better. The commissioners chose the conservative course. In the light of then existing knowledge a different course would have been little short of a foolhardy adventure. Foresight which penetrated the future so far as to realize the wonderful changes so soon to begin in the transportation system would have been phenomenal.

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<sup>9</sup> History and Geography of the Mississippi Valley. Timothy Flint, Cincinnati, 1833, p. 389.

<sup>10</sup> Governor James B. Ray, Message, Dec. 4, 1827, House Journal 12th Sess., p. 15. Such an action as was here suggested was taken by Illinois March 2, 1833, changing the use of its grant for a railroad. From the success of the Illinois Central Railroad and in the light of the failure of the canal, one is reminded of the serious error made by Indiana. Donaldson, Public Domain, pp. 257-8.

<sup>11</sup> Message, Dec. 8, 1829, 13th Sess., p. 14.

<sup>12</sup> Indiana, House Journal, 16th Sess., Appendix F., Dec. 17, 1831.

<sup>13</sup> The Erie and Champlain canals had yielded to the state of New York before their completion five per cent upon the investment. The tolls for 1824 amounted to \$340,642. "The Canal Policy of Pennsylvania," Fulton.

Finally, urged on by the strong demands of public sentiment, the legislature took up in earnest the question of creating a canal fund. The land sales had failed to provide an income sufficient to warrant the letting of contracts,<sup>14</sup> mainly because the length of credit given to the purchasers, one-seventh in cash and the remainder in six equal annual payments, yielded to the state little ready cash. Accordingly, the same act that created a special board to manage the canal funds<sup>15</sup> outlined the final course<sup>16</sup> and authorized a loan of \$200,000. As a safeguard it was provided that the amount of the loan should at no time exceed the amount due on land sales. The certificates were issued on a credit of thirty years, and the canal lands were pledged for their ultimate payment.<sup>17</sup> In addition, the commissioners were directed to begin the construction of some portion of the middle section at once.<sup>18</sup>

The first ground was broken at Fort Wayne, February 22, 1832.<sup>19</sup> Little progress was made during the first year, although local interest ran high. Meetings were held along the line to promote the rapid building of the canal. Committees worked to secure legislative action for additional surveys.<sup>20</sup> The scarcity of good material for locks

<sup>14</sup> The lands were put on sale at Logansport in October, 1830, and at Fort Wayne, October, 1832.

<sup>15</sup> Session Laws of Indiana, 1831-1832, Ch. I, Sec. 3.

<sup>16</sup> This made the canal fund to consist of money derived from the following sources: From the sale of the lands donated by the United States; from loans procured under authority of the state and predicated on the amount arising from the sale of canal lands; from tolls of the canal and rents for the use of all privileges created by the construction; from any donations, grants, or any other sums set apart for this purpose. Session Laws, 1831-2, Ch. I, Sec. 2, p. 3.

<sup>17</sup> Session Laws of Indiana, 1831-2, Ch. I, Sec. 4.

<sup>18</sup> The act was passed Jan. 31, 1832. It directed work to commence before March 2, 1832. Session Laws, Ch. CVIII, p. 113.

<sup>19</sup> For an account of the celebration held and the address by C. W. Ewing on that occasion, Cass County Times, March, 1832, Logansport.

<sup>20</sup> Report of Commissioners, House Journals, 17 Session, p. 99. Wabash Mercury, Lafayette, Sept. 26, 1833.

and waterways proved the greatest obstacle.<sup>21</sup> By 1834 a small part near Fort Wayne had been completed and the first canal boat launched. The first section of 32 miles from Fort Wayne to Huntington was opened July 4, 1835.<sup>22</sup> But in the meantime it had been necessary to make another loan of \$400,000 to secure funds to continue the construction.<sup>23</sup>

Ohio experienced even greater delay than Indiana before beginning her portion. As soon as it had been ascertained that the canal must be a joint work of the two states, commissioners were appointed by both.<sup>24</sup> In the conference which followed, December 18, 1829, a compact was formulated, subject to the ratification of the legislatures of both states.<sup>25</sup> It was agreed that Ohio should commence her portion of the canal before January 1, 1835, keep it in good repair, and charge no higher tolls to citizens of Indiana than to her own citizens. In turn, Indiana was to cede to Ohio her right to the lands granted on the Ohio side.<sup>26</sup> Indiana ratified the compact at its next legislative session,<sup>27</sup> but Ohio delayed action. The state had already undertaken several canals connecting the lake with the Ohio river and dreaded the canal competition which would result from building another line.<sup>28</sup> Fear of the immediate expense of such a work added to this inaction. Finally, after considerable correspondence between the two commonwealths, Ohio accepted the conditions of the cession, February 1, 1834.<sup>29</sup> Within a year

<sup>21</sup> Reports of Chief Engineer, Doc. Journals, No. 6, 1836.

<sup>22</sup> House Journals, 20 Session, p. 12.

<sup>23</sup> Session Laws, 1834, p. 49. Transferable certificates of stock, 6 per cent, for 25 years, were issued.

<sup>24</sup> W. Talmage for Ohio and Jeremiah Sullivan for Indiana.

<sup>25</sup> House Journals, 13th Session, No. 13, p. 14.

<sup>26</sup> Laws of Ohio, 1840-1, p. 200.

<sup>27</sup> Session Laws of Indiana, 1829-1830, Ch. CXXV, pp. 172, 173.

<sup>28</sup> Another cause of delay was the pending boundary dispute between Ohio and Michigan which placed the jurisdiction of a portion of the canal route at issue.

<sup>29</sup> House Journal, Session 13, p. 30; ibid., Session 16, p. 17; ibid., Session 18, p. 16; Session Laws of Indiana, 1832-3, pp. 233, 359; Ohio Laws, Vol. 32, p. 44.

a commission began the selection of lands and located the route. Further surveys led Ohio to make the Maumee bay the eastern terminus, and the remainder of its part was put under contract during 1836.<sup>30</sup>

To the citizens of Indiana, these delays seemed unnecessary and prejudicial to the state's interests and caused at the time some little friction between the two commonwealths.<sup>31</sup> Both, however, soon experienced such difficulties and fiscal embarrassments as to render any progress on public works almost impossible. The compact of 1829 made the canal from the Maumee bay to the Wabash river one work in commercial interests but in two divisions with regard to its finances, construction, and management.

#### AS THE TRUNK LINE OF A GENERAL SYSTEM OF INTERNAL IMPROVEMENTS.

During the period from 1830 to 1835 the population of Indiana rapidly increased.<sup>1</sup> This led to a correspondingly greater need of facilities for transportation. The same motives which had secured for the state the partially completed Wabash and Erie canal now led to the inauguration of a plan for an expansion of the state's public works. Ohio's canal system begun in 1828 had proven successful from the tax-payer's standpoint. The financial success of the Erie canal aroused among the new states a similar enthusiasm for internal improvements. It was well known that New York had created a debt of \$10,000,000 for this purpose. The local newspapers quoted Governor Marcy's statement in his annual message where he said, "The revenue arising from these works will in the short space of three years more than pay off

<sup>30</sup> Ex. Doc., Indiana, No. 32, p. 5; Doc. Journals, No. 2, p. 2, 1837.

<sup>31</sup> Mitchell, Compendium of Canals and Railroads, p. 70, Philadelphia, 1835; Lafayette Free Press, Feb. 5, 1836.

<sup>1</sup> U. S. Census, 1830 and 1840.

every cent of their cost."<sup>2</sup> The same papers stated that the tolls on the Erie canal for 1833 had amounted to \$235,000 and this in face of a reduction of 28 per cent. on tolls.<sup>3</sup> These and similar representations were very potent factors in pushing the state where its own needs and wants already inclined it.

Accordingly, the proposed general system was presented to the legislature of 1835 by an act then popularly known as the Mammoth bill, so called from the huge proportions of the system proposed. The estimated cost of the improvements projected by this bill was \$5,910,000.<sup>4</sup> The plan included an extension of the Wabash and Erie canal from Tippecanoe to Lafayette, and a network of connecting canals, railroads, and turnpikes. Discussion upon the bill was animated. The whole principle of state public works was freely discussed.<sup>5</sup> The question of railroads or canals was again canvassed. However, the bill failed at the first session, not because of a strong hostile sentiment, but rather because of a demand for more definite information and for more mature deliberation.

A great deal has been written on this point and in most cases the state has been accused of plunging hastily into a wild scheme of internal improvement. Nothing is farther from the truth. Such an action was just what the state deliberately tried to avoid. Surveys were ordered and the question was made an issue at the succeeding election. A revolution in the means of transportation and bad administrative methods were factors which the community at large could not anticipate.

The legislature of 1835 took two important steps: it

<sup>2</sup> Governor Marcy, 1834, annual message to legislature of New York.

<sup>3</sup> Wabash Mercury, Lafayette, Feb. 27, 1834.

<sup>4</sup> Estimate of Mr. Wallace for the legislature. Detailed statement of separate works published in Lafayette Free Press, Feb. 6, 1835.

<sup>5</sup> Reports of Proceedings of General Assembly, published in Lafayette Free Press, Feb. 6, 1835; Feb. 16, 1835.

appropriated \$227,000 to extend the Wabash and Erie canal from the mouth of the Tippecanoe river to Lafayette and ordered a series of surveys to determine the feasibility of the individual works planned in the Mammoth bill.<sup>6</sup>

During the next summer and the campaign in the fall this subject was uppermost. In the election of 1835 there were but two issues: an ad valorem tax and a state system of internal improvements. Candidates announced themselves as favoring or opposing these measures. The arena of discussion was for the summer transferred to the local gatherings and the public press. The system planned was so generally distributed that nearly every section contained some public work,<sup>7</sup> and, consequently, there could be little opportunity for a dissatisfied, jealous, local interest to develop any strength.<sup>8</sup> The newspapers presented again the various arguments relative to the merits of railroads and canals.<sup>9</sup> England's experience showing that its railroads yielded an income of from 6 to 9 per cent. on investments in contrast to the canals with 15 to 136 per cent. was presented.<sup>10</sup> Railroads, it was said, could not sustain themselves in a new and sparsely populated region; short lines might, in densely settled parts at times, be valuable.

With the meeting of the General Assembly in December, the question became paramount in the halls of the legislature. The speaker of the House in an address to that body called attention to the seriousness and importance of the subject upon which they were called to take action. Leading members of both parties became ardent

<sup>6</sup> Session Laws, 1834-5, Ch. XVI, p. 25.

<sup>7</sup> Only seven counties were without a navigable stream or some contemplated public work.

<sup>8</sup> Logansport Telegraph, Aug. 22, 1835. Lafayette Free Press, July 3, 1835, and Sept. 25, 1835.

<sup>9</sup> "Indiana Farmer," a series of articles widely copied in local newspapers, contained a careful consideration of this question.

<sup>10</sup> See "Indiana Farmer" in Lafayette Free Press, June 5, Aug. 14, Aug. 27, Sept. 11, Dec. 4, 1835.

supporters of the measure. Governor Noble in his message reported the favorable character of the various surveys completed during the summer, and recommended the expenditure of ten million dollars on such a system of internal improvements.<sup>11</sup> Public opinion was thoroughly in accord with such a movement. Without delay a bill was introduced and enacted into law.<sup>12</sup> In the popular branch the overwhelming majority of 65 to 18 voted for the measure, and in the Senate there was a majority of two-thirds.<sup>13</sup>

The act created a Board of Internal Improvements consisting of nine members so classified that the terms of three expired each year. The members, appointed by the governor, were to be assigned individual works over which each was to be an acting commissioner. In his appointments the governor was instructed to have regard to the local situation of the nominee, so that each work should be represented. This proved to be a fatal defect of the administration. Each member of the board determined to complete the work of his home district at the earliest possible moment. The work of construction under the act reduced itself to a scramble to see which one could finish his work first and thus secure the approval of his locality. The failure of the plan under such a policy was inevitable.

The system was to be a combination of canals, railroads, and turnpikes with the Wabash and Erie canal and the Ohio river as the main arteries. Each separate work was to have a termination at the lake, the Wabash canal, or the Ohio river, the Wabash canal constituting the main artery or trunk to the plan.<sup>14</sup> The act extended the

<sup>11</sup> Doc. Journal, 1836-7, Message Governor Noble, Dec., 1836; Lafayette Journal and Free Press, Dec. 18, 1835.

<sup>12</sup> Jan. 27, 1836, Session Laws, 1835-6, Ch. II.

<sup>13</sup> Lafayette Journal and Free Press, Jan. 22, 1836; Niles' Register, Vol. 44, p. 388.

<sup>14</sup> Message of Governor Noble, Dec. 8, 1835; House Journal No. 20, p. 12, and Doc. Journals, 1856, Pt. II, No. 23; Tippecanoe Journal, Aug. 18, 1842.

Wabash and Erie canal from the mouth of the Tippecanoe river to Terre Haute and from thence by a section known as the Cross Cut canal to the Central canal on the White river.<sup>15</sup> The Central canal as projected had its beginning at Peru on the Wabash and Erie canal running south by way of Indianapolis and thence down the White river to the Ohio at Evansville. Later the portion of this from the junction of the Cross Cut with the White river at Evansville was built as an extension of the Wabash and Erie canal.<sup>16</sup>

To carry out this elaborate plan a loan of \$10,000,000 on a credit of 25 years at a rate not to exceed 5 per cent. was authorized. At this time the construction of the Wabash and Erie canal was progressing slowly. To secure its speedy completion from the Ohio state line to the mouth of the Tippecanoe river, section 10 of the act authorized the Canal Fund Commissioners to negotiate a loan of \$500,000.<sup>17</sup>

The passage of this act was exceedingly popular, "Hailed by its friends, as the dawning of a new era in the history of our legislation, essential to the prosperity of our people, and highly creditable to the character of Indiana."<sup>18</sup> It was denominated by the state's chief executive as an act which "has not been fastened upon her by surprise nor imposed upon the people as the hasty offspring of over zealous public agents. It was

<sup>15</sup> Tippecanoe Journal, March 23, 1842. The length of the Cross Cut canal as surveyed was 41½ miles.

<sup>16</sup> For the Central Canal, 290 miles, \$3,500,000 was appropriated, and for the Cross Cut canal the amount was \$1,300,000. Another canal on White Water to connect Cambridge on the National road with the Ohio river, 76 miles, was included with an appropriation of \$1,400,000. The system included a railroad from Madison to Lafayette, \$1,300,000; a macadamized road from New Albany to Vincennes, \$1,150,000; a railroad or turnpike from Jeffersonville to Crawfordsville, \$1,300,000; the improvement of the Wabash river as a part of the system from its mouth to Vincennes, \$50,000; and a survey for a railroad or canal from Fort Wayne to Lake Michigan. Session Laws, 1835-6, Ch. II, p. 6.

<sup>17</sup> Session Laws, 1835-6, Ch. II, Sec. 10.

<sup>18</sup> Lafayette Journal and Free Press, Jan. 29, 1836.

openly discussed for over two years, made the turning point in our elections and as public sentiment demanded it, with full knowledge of ulterior consequences, it may be emphatically called the measure of the people.”<sup>19</sup> Some years later an attempt was made to lay the responsibility upon political parties. But a search of the legislative records proves beyond a doubt its non-partisan character. In the bitter controversies of more recent years writers frequently project into this period their own perspective. It is scarcely reasonable to demand a foresight which should view in the few short lines of railroad then in existence, with their poorly constructed road beds, the revolution already impending. It has been suggested that the best vindication of the system lies in the fact that every line then planned has been paralleled by a railroad, and a paying one, too.<sup>20</sup> An attempt to extend the system still farther the following year met with speedy defeat.<sup>21</sup> We hold “any extravagant, visionary, or vacillating policy to be ruinous to the state,”<sup>22</sup> said the senate committee in its adverse report upon this measure.<sup>23</sup>

Before the Wabash and Erie canal was completed to the original terminus, the Tippecanoe river, the act of 1835 had extended it to Lafayette, and before this extension could even be begun it had been decided under the general state system to make Terre Haute its southern terminus.<sup>24</sup> The work was carried along steadily by the

<sup>19</sup> Governor Noble, Message of Dec. 5, 1836; Doc. Journal, 1836-.

<sup>20</sup> Dunn, J. P., *Men of Progress*, p. 34.

<sup>21</sup> A measure really intended to be supplementary to the “Mammoth” bill and therefore popularly known as the “calf.” It provided for 27 distinct works. Its main support came from log-rolling among the legislators. *Lafayette Free Press*, Dec. 17, 1836, Jan. 6, 13, and 27, 1837.

<sup>22</sup> These words are significant, as they are practically an expression of the imputation thrown against the original act of 1836.

<sup>23</sup> *Lafayette Free Press*, Feb. 17, 1837, and cf. Governor’s Message, Dec., 1836.

<sup>24</sup> The selection of the mouth of the Tippecanoe as the southern terminus had been based on the theory that this was the head of navi-

Board of Internal Improvements. This canal had a great advantage over the new parts of the system in having a land grant<sup>25</sup> behind it and a small income from the already completed portion.<sup>26</sup> Ohio advanced more slowly with its part. The financial embarrassment throughout the United States after 1837 put a stop generally to active operation on public improvements.<sup>27</sup> Five years after the contracts were let,<sup>28</sup> the legislature of Ohio directed the Board of Public Works to proceed to the completion of the Wabash and Erie canal. "Even amid the serious embarrassments of the times, the state of Ohio will continue to make every exertion to fulfil her obligations and promote the mutual interests of both states by an early completion of this improvement" ran the slightly encouraging resolution of the General Assembly.

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gation in all seasons. It was early realized that the Wabash river was not navigable in all seasons so far up, and indeed it became in time the prevailing idea that no part was satisfactory for a waterway, and hence the further extension to Terre Haute and later to Evansville on the Ohio. This change of view is not at all to be charged to a shifting policy. A stream that was navigable to the flat boat trade of the earlier frontier life did not satisfy the steamboat traffic of later years and especially as increasing business enlarged the size of these. But even more important in bringing about a new conception of the place the canal must take and the location of its southern terminus was the actually decreasing volume of water in the Indiana rivers. As long as the region was heavily forested, the matting of leaves and windfall conserved the rainfall so as to maintain a considerable flow in the streams throughout the year. The removal of these forests and the breaking of the soil and subsoil drainage caused the rapid draining of the water and decidedly decreased the volume of the streams during the long summer season.

<sup>25</sup> The state surveyed a route for the extension from Lafayette to Terre Haute in the summer of 1835, presuming upon the right of the state to select lands under the act of 1827. Lands were selected accordingly and Congress was asked to confirm the action, which was done. For survey see Ex. Docs. of Indiana, No. 32, 1835-6. For Act of Congress confirming, U. S. Statutes, Vol. V., p. 414, Act of Feb. 27, 1841.

<sup>26</sup> The canal was completed to Wabash, July 4, 1837; Peru, same month; Logansport, Sept., 1838; Tippecanoe river, 1841; Lafayette, July 4, 1843.

<sup>27</sup> Annual Report of Ohio Board of Public Works, Dec. 30, 1839.

<sup>28</sup> March 29, 1841, Laws of Ohio, Vol. 39, p. 200, 39th Session.

From the completion of the upper sections the interstate character of the canal made it necessary to arrange similar schedules of tolls by frequent communications between the canal boards of Indiana and Ohio. Different rates in the two states were regarded as a violation of the compact whereby Indiana had ceded the canal lands to Ohio, and uniform tolls were generally maintained throughout the whole line.<sup>29</sup>

#### MISMANAGEMENT AND COLLAPSE IN THE PANIC OF “1873”

As soon as the legislature committed the state to a general system of internal improvements, there was a great eagerness on the part of the public to have every work completed without delay.<sup>1</sup> Governor Noble urged at the beginning of the following legislative session that, since the system was being begun under favorable circumstances, careful and wise financial planning was necessary; and further, that the rapid disbursement of money would lead to extravagance, high living, and then a reaction when the system would become a burden.<sup>2</sup> These words uttered when all was prosperous proved an all too true prophecy of the actual mistake that was made by the state.

From the reports of the Board of Internal Improvements, it appears that up to this time the land sales for the Wabash and Erie canal had amounted to about 18 per cent. of the total receipts. That is, the land sales furnished about one-sixth of the funds and the other five-sixths were secured by loans negotiated by the state. For the extension planned by the act of 1836, \$241,742.58 was secured from another loan. For the other parts of the system, a bond issue of \$950,000 more was floated. To this

<sup>29</sup> Reports of Superintendent Wabash and Erie Canal, Part I, No. 8.

<sup>1</sup> Letter of Jesse L. Williams, Lafayette Free Press, Sept. 25, 1841; Indiana Gazetteer, p. 25, Indianapolis, 1849.

<sup>2</sup> Doc. Journal, 1836-7, Message of Governor Noble, Dec. 5, 1836.

was added in 1837 for the general system, \$1,650,000 and for the Wabash and Erie canal east of the Tippecanoe river \$400,000.<sup>3</sup> In rapid succession the market was flooded in the next year with a total of \$1,800,000 for the general system and in 1839 with \$1,632,000. Of course, the rapid sale of bonds for the general system affected disastrously the market for the Wabash and Erie bonds and rendered helpless the one work that could have become safe financially.<sup>4</sup> To add to the state's embarrassment, the price of labor, provisions, and material increased the cost of the various works far above the original estimates. At the time these vast sums were being expended for construction, very little was being returned to the state. One work only was far enough advanced to yield an income. The Wabash and Erie canal earned from tolls for 1838, \$1,398.37, though this was a sum scarcely sufficient to pay the salary of one of the fund commissioners.<sup>5</sup>

The attempt had been made to secure capital from abroad by means of the state's credit, but the latter had been extended beyond the limit permissible by sound fiscal laws. The authorities lost largely by selling bonds on credit. In several cases the purchaser failed through unsuccessful speculations to be able to meet his obligations to the state. The general panic in business extended to these loan companies. For instance, the Morris Canal and Banking Company of New York failed, owing the state on bonds, which it had purchased on credit, \$2,112,200.00. The failure of other parties and institutions caused the state to lose in the same way over \$1,000,000 more.<sup>6</sup> The estimated loss to the state in negotiating the sale of its bonds on credit was \$3,183,461.00, or a loss of 25 per cent. of the value of the bonds offered for sale. Such losses wrecked the gen-

<sup>3</sup> Revised Statutes, Indiana, 1838, pp. 133-4.

<sup>4</sup> Tenth Census, U. S., Vol. VII, p. 618.

<sup>5</sup> Doc. Journal, No. 23, Report of Fund Commissioners, 1838.

<sup>6</sup> Report of State Agent, Dec. 15, 1845, Ex. Doc., 1845; Louisville Journal, Nov., 1841; Tippecanoe Journal, Dec. 1, 1841.

eral system of internal improvements. All might have been avoided had there been less haste in prosecuting the construction of the various works projected.

What was demanded for the success of the system from a financial standpoint was the deliberate letting of contracts so as to finish up works in connected sections at points nearest the trunk line first and thus make these sections self-supporting and at the same time relieve the state of part of its burden. The letting of new contracts only so fast as the state could assume by taxation the interest payments would have made the projected system safe and comparatively easy. Instead there was the most precipitate haste. Contemporary authorities put the case very clearly. "The policy of constructing the works and parts of works simultaneously was so well pursued, that no considerable portion of any work was completed or fit for use. .... There lies the system still, its unfinished excavations, embankments, locks, culverts, aqueducts and bridges hastening to ruin."<sup>7</sup> Somewhat later another wrote: "In many places public works were commenced where there was no surplus of labor or produce, where they did not lead to a market, and where the lot speculator was the only person who could be profited."<sup>8</sup> For such a mistaken public policy, the blame can rest only in one place. The Board of Internal Improvements yielding to outside pressure committed a blunder in administering its trust. Without doubt the voice of the public supported its action, but it was a time when a sound fiscal policy required that the impatient demands of the interested citizens along the several routes should be disregarded.<sup>9</sup>

By 1839 the entire state system of public works was para-

<sup>7</sup> Louisville Journal, Nov., 1841, copied in Tippecanoe Journal, Lafayette, Dec. 1, 1841.

<sup>8</sup> Indiana Gazetteer, 1849, p. 25.

<sup>9</sup> The correspondence of the state's engineer, Mr. Jesse L. Williams, shows how contrary to his strongly expressed judgment this policy was. Reports of State Engineer, 1836-39.

lyzed. The state could not find purchasers for its bonds; the contractors could not secure payments on their contracts; the Board of Internal Improvements could not meet its obligations, and consequently abandoned, in August of 1839, all efforts to complete the public works.<sup>10</sup> The following year, the state issued \$1,500,000 in treasury notes to provide for the unpaid balances due the contractors.<sup>11</sup> With barely revenue enough to pay the ordinary civil expenses, the additional annual interest account of nearly a half million dollars could not be paid.<sup>12</sup> In February, 1841, the legislature, confronted by an unpaid interest account and with as heavy a tax burden as its weakened resources would apparently bear, cut the Gordian knot by an issue of bonds to pay the interest on the public debt. These were worthless under the circumstances, and when tendered to the bondholders were nearly all rejected.

To secure partial relief and place the public works where they might be completed to a paying point, the same legislature authorized the organization of private companies to own, complete, and operate all the unfinished portions, except the Wabash and Erie canal which was to be retained by the state. This act also abolished the Board of Internal Improvements, the office of Fund Commissioner, and Chief Engineer, creating in their stead a Canal Commissioner, and also a State Agent to perform the duties of the Fund Commissioners.<sup>13</sup> To increase the financial confusion, the legislature attempted to sustain and give credit to its depreciated currency, land scrip,<sup>14</sup> and treasury notes,<sup>15</sup> by

<sup>10</sup> Governor's Message, Dec. 7, 1841, Doc. Journal, 1841-2.

<sup>11</sup> Auditor's Report, Doc. Journal, 1845, Part II, No. 19.

<sup>12</sup> At this time the revenue from all sources, equaling \$420,388.00, was absorbed by the regular civil expenses; the annual interest account was \$400,000.00 additional. See Tenth Census, United States, Vol. VII, p. 620.

<sup>13</sup> General Laws of Indiana, 1841-2, p. 3, Act. of Jan. 28, 1842.

<sup>14</sup> There were several forms of land scrip:

a. A scrip based on the canal lands east of Lafayette, popularly known as "White Dog."

b. Another issued on the lands west of Lafayette, known as "Blue Dog."

making them "receivable for all canal tolls and water rents on the Wabash and Erie canal."<sup>16</sup> The measure failed to add to the value of the currency but crippled the work of construction and repairs on the entire canal by depriving it of available funds.<sup>17</sup>

By 1841, the state had piled up a debt of \$13,148,453.00, of which \$9,464,453.00 was on account of the internal improvement system.<sup>18</sup> During the next five years this was

c. A third, a sort of shinplaster currency, known as "Blue Pup." This was an unlimited issue in small denominations by the contractors for their convenience in paying labor. It was based on "Blue Dog" and circulated quite generally at greatly depreciated rates.

See Laws of Indiana, Jan. 1, 1842, Ch. V, p. 24; Niles' Register, Vol. 15, p. 69; Tippecanoe Journal, Jan. 19, 1843, Feb. 16, 1843, Nov. 13, 1843, and Dec. 18, 1845; Doc. Journal, 1841-2, Message of Governor, Dec. 7, 1841.

<sup>15</sup> Issued in 1840, after suspension of public work to pay contractors, bore interest at one-fourth of one per cent, and circulated at about fifty cents on the dollar. Report of Commissioner, Part II, No. 6, 1842.

<sup>16</sup> Session Laws of Indiana, 1843. Cp. Tippecanoe Journal, Feb. 16, 1843.

<sup>17</sup> Governor's Message, Dec. 7, 1841, Doc. Journal, 1841-2.

<sup>18</sup> A detailed statement of the state debt to 1840, inclusive of the state stock in the State bank, follows:

1832 for Wabash and Erie canal.....	\$100,000.00
1834 " stock to subscribe for State bank.....	500,000.00
1835 " Wabash and Erie canal.....	605,257.42
1835 " State bank .....	890,000.00
1836 " Wabash and Erie canal.....	241,742.58
1836 " General internal improvement system.....	850,000.00
1836 " The Lawrenceburg and Indianapolis railroad	100,000.00
1837 " The Wabash and Erie canal.....	380,000.00
1837 " General Internal Improvement system.....	1,650,000.00
1837 " Lawrenceburg and Indianapolis railroad.....	124,000.00
1838 " General internal improvement system.....	1,800,000.00
1839 " Wabash and Erie canal.....	400,000.00
1839 " General internal improvement system.....	1,632,000.00
1839 " State bank .....	1,000,000.00
1839 " State bank instead of fourth instalment of surplus revenue which was to have been invested in bank stock .....	294,000.00
1839 " Indianapolis and Madison railroad .....	455,000.00
1839 " Amount advanced by State bank on public works .....	629,453.00
1840 " Treasury notes issued to contractors of public works .....	1,500,000.00
Total debt .....	\$13,151,453.00

rapidly increasing by unpaid interest. On the other hand, it had to its credit about 200 miles of canal in use, yielding \$5,000.00 in tolls, two railroads yielding \$26,000.00 more annually; and several useless fragments of canals. The Cross Cut canal and the southern division of the Central canal, on which little had been accomplished, became integral parts of the Wabash and Erie waterway on its extension to the Ohio river. The other portions of the state system were either purchased by private companies and completed or abandoned entirely.<sup>19</sup> This cleared the way for the state to concentrate its efforts on the completion of the Wabash and Erie canal to Terre Haute as provided in the act of 1836.<sup>20</sup>

Ohio's part of the canal was finally completed to Maumee bay in 1843, the same year in which Lafayette became the western terminus. Prior to this date the only traffic was the small local trade. With the extension of the canal to the lake, on the east, the through traffic which immediately followed raised the income from tolls six-fold;

<sup>19</sup> The state abandoned outright three of its works: The Jeffersonville and Crawfordsville road, after expending \$339,183.18; the Lafayette and Indianapolis road after expending \$73,142.87; the work on the Wabash rapids after expending \$14,288.42. The White Water canal projected from Lawrenceburg to the mouth of Nettle creek,  $76\frac{1}{2}$  miles, was completed for 31 miles between the Ohio river and Brookville. The work cost \$1,099,867. It was later completed by a private company and maintained in successful operation for some years. Rents and tolls had brought the state \$9902.41. The Northern division of the Central canal was sold to private parties in 1850 and 1851. It had cost the state something over \$863,209.88. The state received in tolls and rents \$13,720.13. Similarly the Madison and Indianapolis railroad passed into private control after costing the state \$1,624,603.05 and returning \$63,182.32. No part of the Erie and Michigan canal was finished. A feeder and surveys cost the state \$156,324.00. The water power of the Northport feeder dam was available and that was conveyed to Noble county for school purposes. On the Central canal between Indianapolis and Evansville, \$574-646.49 was expended; on the Cross Cut, \$436,189.88. See Doc. Journals, Indiana, 1847, No. 2, p. 77; 1850, Part I, No. 1, p. 41; Indiana Gazetteer, 1849, pp. 26-7; Niles' Register, Vol. X, p. 40, March 20, 1841; Vol. II, pp. 293-4, Jan. 8, 1842.

<sup>20</sup> At the time the general system collapsed, \$408,855.00 had been expended on this extension.

Indiana's share now became \$60,000.00, Ohio's \$35,000.00.<sup>21</sup>

During 1844 a disastrous flood closed navigation for two months, and the Superintendent's<sup>22</sup> report for the year showed a decrease of 7 per cent in tolls. The tolls and rents still fell short of furnishing an adequate income for the ordinary repairs and maintenance by 27 per cent. Consequently, the creditors could get no return from this source, even in interest, for their investment. They looked to the state for relief, but the state was crippled in its efforts to provide adequate revenue through taxation because of the stagnation in business and the general impoverished condition after the panic. A recourse to increased exportations, in order to bring enough money into the state to make higher taxes immediately possible, was out of the question; such a course demanded markets in the east for its raw products. Unfortunately, just at this time, every other state was in need of these eastern markets and was flooding them. Distance and cost of transportation put Indiana at a disadvantage. Under such circumstances, the less scrupulous classes favored an immediate repudiation of the entire internal improvement debt.

#### THE BUTLER BILL: REPUDIATION OR RESUMPTION

Two problems presented themselves to the state of Indiana in 1845: one was to complete the Wabash and Erie canal to a point where it was hoped the canal would become a profitable work; the other was to provide a way to manage the state debt. In the solution of these problems, they became inseparably connected. The preceding session of the state legislature had expressed strongly the ultimate

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<sup>21</sup> The length of the entire canal at this time was 215 miles; 144 miles were in Indiana and 71 in Ohio. United States Senate Docs., No. 202, 28th Cong., 1st Sess., Vol. 4; Cp. Indiana Doc. Journal, 1841, Part II, No. 7, Governor's Message.

<sup>22</sup> To unify the interests of the sections east and west of Lafayette and centralize the control, the offices of commissioners for the two parts were abolished and a general superintendent was provided. General Laws Indiana, 28th Session, 1843-4, p. 14.

intention of the state to meet its obligation to the fullest extent. It recognized the state's moral obligation in the matter and admitted that a refusal to meet her plighted faith given over her own seal was equivalent to a forfeiture of her station in the sisterhood of states.<sup>1</sup>

Indiana was not alone in her embarrassment. In Pennsylvania the unusual course of postponing the payment of the domestic debt in order to pay the public debt had been pursued. Ohio imposed a tax of 75 cents on the \$100 to meet the interest on the public debt.<sup>2</sup> Michigan's internal improvement system had failed and the state was unable to meet its interest demands.<sup>3</sup> The failure of Indiana and Michigan, led the dissatisfied creditors, both European and American, to appoint Charles Butler as their agent.<sup>4</sup> Butler was commissioned to visit the two states and secure some measure of relief for the bondholders. He first visited Michigan, and after a partially favorable adjustment there in 1842,<sup>5</sup> he turned his attention to Indiana. Before a Terre

<sup>1</sup> Resolution of legislature on Public Debt, 1844-5.

<sup>2</sup> Ohio had constructed canals at the following cost:

The Miami and Erie canal.....	\$8,062,880
The Ohio canal .....	4,695,203
Walhonding canal .....	607,268
Hocking canal .....	975,481
Muskingum Improvement .....	1,627,018
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Total canal debt .....	\$15,967,850

<sup>3</sup> Pennsylvania, Maryland, Michigan, Mississippi, Illinois and Indiana defaulted in their interest payments. Scott, *The Repudiation of State Debts*, p. 228.

<sup>4</sup> Charles Butler, a New York attorney, was later the president of Union Theological Seminary. "A History of Union Theological Seminary" is the title of a recent publication which contains a brief biography and collects into an appendix the series of letters which Mr. Butler wrote to his wife while he was agent of the bondholders in Indiana. These letters are of incalculable value in reconstructing the history of this critical period in Indiana. There is a homely, familiar tone to his letters, frank and honest, which convinces one that he believes himself that he represents the moral side and that for him to win is to save the honor of the state. At times the letters exhibit an almost pathetic anxiety lest justice shall not be done.

<sup>5</sup> The legislature of Michigan authorized a loan of \$5,000,000 for a system of improvements by an act of March 21, 1837. Much diffi-

Haute audience in May, 1845, he began his campaign by suggesting a plan which would satisfy the state's creditors. "Pay us by your state tax and otherwise a portion of the interest on your public debt and we shall be willing to look to the revenues of the canal for the balance" was his plea.<sup>6</sup>

A convention of those interested in the completion of the Wabash and Erie canal to the Ohio river followed a few months later.<sup>7</sup> This was on the eve of the assembling of the state legislature. The convention prepared a memorial to be presented to that body in which it almost unanimously endorsed the plan suggested by Mr. Butler, and recommended as an additional feature that the bondholders advance a sum sufficient to complete the canal, taking its revenues or the lands given by Congress as their security.<sup>8</sup> Combining these two plans, the original suggestion of Mr. Butler and the convention's additional feature regarding the means for completing the canal gave a working scheme. Henceforth the problem was to stimulate public sentiment to action. From other parts of the state came suggestions of a similar nature. The rumor spread that the creditors would give further time, diminish the interest, and make deductions from the principal in return for the punctual payment of interest. Others argued that the state could transfer in part payment of its debt such property as its Bank stock, the Wabash and Erie canal, and its interest in other improvements. The property would still be within

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culty was experienced in disposing of its bonds, but finally they were sold to the Morris Canal and Banking Co. and the United States Bank of Pennsylvania. The latter agreed to pay for its portion by a system of regular payments. The two companies failed before Michigan had received more than about three hundred dollars in cash per one thousand dollars of its loan. By the adjustment act of Feb. 17, 1842, the state agreed to pay her creditors as much as she had actually received from the banking companies to whom she originally sold the bonds, with interest, repudiating the remainder. See, *The Repudiation of State Debts*, Scott, pp. 161-4.

<sup>6</sup> From extract of speech in Tippecanoe Journal and Free Press, Lafayette, Nov. 20, 1845.

<sup>7</sup> The Convention met in Evansville, Ind., Nov. 4, 1845.

<sup>8</sup> Tippecanoe Journal and Free Press, Nov. 20, 1845.

the state and benefit commerce with the additional advantage of better management under private control.<sup>9</sup> The fall elections had pledged successful candidates in several counties to work for some provision looking toward the payment of the debt.<sup>10</sup> Repudiation or adjustment had been flung at the people by the outside press.<sup>11</sup>

It seems altogether probable that the sentiment throughout the state at this time favored the payment of the debt.<sup>12</sup> A competent contemporary writer maintained that the politicians instead of the people stood in the way; that a species of demagogism was practiced when strong convictions for payment should have been expressed to the taxpayers.<sup>13</sup> The legislature assembled Dec. 1, 1845. Mr. Butler was present at this time preparing to work for the claims of the bondholders. He confessed to his wife in a letter that the situation was almost hopeless: "The prospects are altogether discouraging and almost everybody says that nothing can be done." "It is really amazing to see what a paralysis hangs upon the people." "It is certain that if the question is not now settled it never will be; the people will go into repudiation."<sup>14</sup> He soon came to the conclusion, however, that though "The state is on the verge of repudiation . . . they have not known it."<sup>15</sup>

To arouse this dormant public conscience became Butler's self-set task.<sup>16</sup> He formally introduced his case by transmitting a statement for the bondholders to the Gover-

<sup>9</sup> Tippecanoe Journal and Free Press, Nov. 13, 1845.

<sup>10</sup> Ibid., Dec. 4, 1845.

<sup>11</sup> New York Tribune, October 18, 1845.

<sup>12</sup> Report of Joint Committee of Legislature, Doc. Journ., 1845, No. 21, Pt. II.

<sup>13</sup> Thomas Dowling in Tippecanoe Journal and Free Press, Dec. 4, 1845.

<sup>14</sup> Letters of Charles Butler, Nov. 29, 1844, *A History of Union Theological Seminary*, p. 454. Subsequent citations to this work will be made in the form, "Letters of Chas. Butler."

<sup>15</sup> Ibid., Dec. 10, 1845, p. 457.

<sup>16</sup> "I am fully persuaded that it is only by addressing myself to the conscience of the people, stirring that up and bringing that to bear, that I stand the slightest chance of success." Letters of Chas. Butler, Dec. 7, 1845, p. 455.

nor and legislature.<sup>17</sup> The letter presented the grievances of the creditors and set forth the following propositions: (a) interest remains unpaid for five years; (b) there is no assurance of when and how the bondholders may expect relief; (c) the revenues of the Wabash and Erie canal are not being used to pay the interest on the loans, but diverted to other channels; (d) it is unjust to make the tolls receivable in a land scrip at par when the market value is only forty cents on the dollar; (e) the bonds are in the hands of trustees, guardians, retired and aged persons, widows, whose reliance for support is on their income and the loss of which falls heavily; (f) the state enjoys prosperity; (g) the times are auspicious for action; (h) "The state cannot be constrained to make payment, in any manner, at the will of the holders of her bonds, however pressing their necessities may be; they are left to depend entirely for the fulfilment of obligations, upon her own sense of honor and justice."<sup>18</sup> This letter was sent by the Governor to the legislature where, according to Butler's own testimony, it was generally favorably received.<sup>19</sup> It showed him at once that there were strong supporters<sup>20</sup> of an honest settlement.<sup>21</sup>

A joint committee of the legislature was created and before this body Mr. Butler was invited to present his proposals. December 19, 1845, he outlined a plan of settlement containing proposals which were in the main an elaboration of his Terre Haute suggestions: a payment of the interest in arrears on July 1, 1846, by certificate which should be payable Jan. 1, 1851, or be funded at that time,

<sup>17</sup> Letter of Chas. Butler, Dec. 11, 1845. Published in pamphlet form, Morrison and Spann, Indianapolis, 1845.

<sup>18</sup> Letters of Chas. Butler, Dec. 11, 1845, p. 461.

<sup>19</sup> Tippecanoe Journal and Free Press, Dec. 18, 1845; Letters of Chas. Butler, Dec. 12, 1845, p. 464.

<sup>20</sup> Letters of Chas. Butler, Dec. 7, 1845, p. 456.

<sup>21</sup> It was about this time that General Joseph Lane, in the State Senate, said that he would cut cord wood to pay his portion of the public debt, rather than see Indiana dishonored. Nathaniel Bolton, Early History of Indianapolis and Central Indiana, Pamphlet, Ind. His. Soc., Pubs., 1853, p. 27.

at the pleasure of the state with interest from January 1, 1851, at five per cent.; during the same period the bonds to bear three per cent. interest; for this two per cent. should be secured by a tax of three mills on the dollar and a poll tax of seventy-five cents, the other one per cent. to come from the revenues of the Wabash and Erie canal; in case of a deficiency from the revenues of the canal, the shortage should be funded January 1, 1851; the state was obligated to complete the canal to the Ohio river within three or four years; after 1851 the entire three per cent. should come from taxation; for the remaining two per cent., the creditors were to rely on the revenues from the entire Wabash and Erie canal. The proposal expressed the confidence that the revenues of the canal when completed would be sufficient to make up the full five per cent. on all bonds, besides leaving a surplus to be annually applied toward the redemption of the principal.<sup>22</sup> His proposals received the support of Governor Whitcomb in a special message to the Senate.<sup>23</sup> At the following conference<sup>24</sup> of the joint committee, Butler defended his measure in detail.

His letters indicate that the outlook for his cause in the House during the last weeks of December was more hopeful. But of the Senators, he says: "They have ever since I came here made a dead set at me and are constantly raising questions. They want to prevent all action, some from one cause and some from another. They wish to stifle the movement, but it will go on by force of its own intrinsic, mighty moral power."<sup>25</sup> It looks to one canvassing their opposition at the present day very much as though it came from men striving for a better bargain with the state's creditors and doubtless often from persons trying to make poli-

<sup>22</sup> Doc. Journal, No. 21, Part II, 1845.

<sup>23</sup> Governor Whitcomb, Dec. 23, 1845, and Letters of Chas. Butler, Dec. 23, 1845, p. 470.

<sup>24</sup> Conferences of this committee which was composed of twenty-four members were held daily. See Letters of Chas. Butler, Dec. 22, Dec. 23 and Dec. 24.

<sup>25</sup> Letters of Chas. Butler, Dec. 24, 1845, p. 472.

tical capital of the whole matter, while the state was looking for a liberal proposition. A compromise was desired and expected.<sup>26</sup>

Christmas day, after two sessions of the joint committee, that body reported to Mr. Butler its inability to accede to the terms of his proposition. The committee claimed to regard the payment of three per cent. on the whole debt by taxation after 1851 as beyond the ability of the tax payers to meet.<sup>27</sup> Accordingly, Mr. Butler submitted on the following day his second proposition in the nature of a compromise. His plan divided the debt into two parts; one part to be carried by the tax payers of the state, the other by the revenues of the Wabash and Erie canal. It called for the completion of the canal to the Ohio river and placed the entire work under the management of a board of trustees. The joint committee endorsed the proposal and presented a strong plea for its adoption as most favorable to the state.<sup>28</sup> This action transferred the battle to the halls of the two houses. As the session drew to a close the excitement grew more intense. "It excites such a deep and thrilling interest, they cannot talk or think of anything else," wrote Butler.<sup>29</sup> When a rough Hoosier Senator came in on Sunday to discuss this subject with him, he declined to talk.<sup>30</sup> Thereupon the Senator said he thought the matter was "like lifting the ox out of the gutter, and that it was a work of necessity and mercy."<sup>31</sup> This sentiment seemed to accord with Mr. Butler's views, for the following Sabbath, he himself records a conference with Governor Whitcomb for an hour on the moral aspects of the situation. He added in

<sup>26</sup> Tippecanoe Journal and Free Press, Dec. 29, 1845.

<sup>27</sup> Report of Joint Committee, Doc. Journ., 1845, Part II, No. 21.

<sup>28</sup> *Ibid.*

<sup>29</sup> Letters of Chas. Butler, Dec. 28, 1845, p. 478.

<sup>30</sup> Mr. Butler was usually very strict in his Sabbath observance. During the forepart of the proceedings he steadily persisted in his church attendance, at a time when all others were given over to conferences and public business generally.

<sup>31</sup> Letters of Chas Butler, Dec. 28, 1845, p. 478.

a letter,<sup>32</sup> "As in Revolutionary times there are no Sabbaths, so it seems to be here in debt paying times."<sup>33</sup>

Two events controlled the actions of the legislature from this point. The ninth of January was the date set for the meeting of the state party conventions, and the legislators were generally unwilling to take definite action until they could obtain an expression of the attitude of their constituents. The fifteenth of January having been set for the final adjournment, all must be done before that time. It seems probable that sentiment was slowly growing favorable to the bill,<sup>34</sup> though in the debates it was much mystified by various interpretations. By one class the altogether mistaken position was assumed that the proposed \$800,000 advance by the bondholders was a loan by the state and must ultimately be repaid.<sup>35</sup> This frightened some of the more timid. Dilatory tactics delayed action. Some held that the people would at the conventions express themselves as against present legislation.<sup>36</sup>

The conventions met January 9, 1846. The Whigs promptly took decided ground in favor of paying the state debt as contemplated by the bill before the legislature. The Democrats, on the other hand, were less united as to a course of action on the state debt but finally after a spirited debate committed the party to the support of Butler's proposition.<sup>37</sup> Four days later, however, the Democratic members of the legislature held a caucus at which an amendment to refer the bill to the people at the August elections was adopted.<sup>38</sup> The Democratic majority in the House and the Whig majority in the Senate made it impossible to pass the

<sup>32</sup> Letters of Chas. Butler, Jan. 11, 1846, p. 486.

<sup>33</sup> Apropos of this phase of the question, on Jan. 4, 1845, Henry Ward Beecher, then a pastor in Indianapolis, preached a strong sermon advocating the cause of payment of the creditor's claims.

<sup>34</sup> Letters of Chas. Butler, Jan. 4, 1846, p. 481.

<sup>35</sup> Tippecanoe Journal and Free Press, Feb. 25, 1847.

<sup>36</sup> Ibid., Jan. 8, 1846.

<sup>37</sup> Letters of Chas. Butler, Jan. 9, 1846, p. 484.

<sup>38</sup> Ibid., Jan. 10, 1846, p. 485; Tippecanoe Journal and Free Press, Jan. 12, and Jan. 15, 1846.

bill as a strictly party measure. Its success, therefore, became dependent upon breaking the caucus agreement, which was done only by the hard work of the Governor and of a few Democratic friends of the bill when it came up in the House on the following morning.<sup>39</sup> The act of settlement when finally passed was a strictly non-partisan measure. Old party lines were temporarily broken, and in many cases new political ties were firmly made, four-fold stronger, says one writer, than those which existed under the old party names.<sup>40</sup>

This act has been generally known as the Butler bill. It divided the public debt into two parts. As to the one part, the state agreed to pay the interest and ultimately the principal out of taxation. For the interest and the principal of the other half, the creditors consented to look to the revenues of the Wabash and Erie canal. To insure the faithful application of these, the canal was placed under the control of a Board of Trustees, one chosen by the state legislature, and two selected by the bondholders.<sup>41</sup> The state did not surrender the work in fee to the bondholders, but, on the contrary, placed the canal in trust for their benefit. The law contemplated no other course save the ultimate payment of that half of the debt from the revenues of the canal and the final return of the work to the state.<sup>42</sup> "If the income," says Mr. Butler, "of the canal turns out to be sufficient to make up the other two and a half per cent of interest, the bondholders and people of Indiana will equally re-

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<sup>39</sup> Letters of Chas. Butler, Jan. 13, 1846, p. 489; Jan. 19, 1846, p. 495; Tippecanoe Journal and Free Press, Jan. 24, 1846. The vote on the final passage was Jan. 16, 1846.

<sup>40</sup> Ibid., Jan. 22, 1846; Jan. 29, 1846; Feb. 5, 1846. O. H. Smith, *Early Indiana Trials*, p. 70, Cincinnati, 1858.

<sup>41</sup> Two of the trustees were required to be citizens of Indiana.

<sup>42</sup> As late as 1854, a competent observer and writer on economic conditions in the West, says: "It is believed that the canal will again pass into the hands of the state, by the ultimate payment of the whole of her debt." Report on Colonial and Lake Trade, Andrews, p. 314.

joice—the former because they get their full interest and the latter because they pay in full. If the revenues fall short, the bondholders will lose, and if they exceed, the over-plus is to be paid into the state treasury, to be applied to the redemption of the principal."<sup>43</sup> Clearly to all parties the settlement was regarded as final.<sup>44</sup>

A bondholder in order to secure the benefits of the law was obliged to surrender his bonds to the state and secure in place of each \$1,000 two certificates one for \$500 drawing five per cent. interest to be paid by taxation and another certificate for \$500 drawing five per cent. interest, which was payable, principal and interest, out of the canal, its lands and tolls. The former became a state stock and the latter a canal stock.<sup>45</sup> The law gave the bondholders no more control over the canal and its revenues than the state retained. The trustees were given the canal to hold for the mutual security of the state and its creditors. The state reserved to itself the right of regulating the tolls, and at any time in its pleasure to redeem the canal and close the trust by paying the balance on the debt. The unpaid interest from 1841 to 1847 was funded and certificates issued as upon the original principal.

After the passage of the Butler bill it remained to be seen whether the creditors would surrender their bonds and accept the settlement made by their agent. Action was necessarily slow, for a majority of the stock was in England. To gather this and to authorize agents in America to take action in those days of slow communication re-

<sup>43</sup> Explanation of the Bill by Chas. Butler, p. 86. Morrison and Spann, Indianapolis, 1845.

<sup>44</sup> The later contingency that the canal should completely fail was not contemplated by either party to the bargain in 1846. This must be borne in mind when it becomes necessary to consider the claims of the bondholders against the state after the failure of the canal.

<sup>45</sup> There was the option with the state of replacing each bond with a \$1000 certificate and paying  $2\frac{1}{2}$  per cent interest upon this from the taxes and another  $2\frac{1}{2}$  per cent from the revenues of the canal. In the actual carrying out of the bill the State Agent adopted the plan of two separate certificates.

quired time. Before the terms were accepted a few minor modifications were demanded. Accordingly, upon the assembling of the legislature in December of 1846, Mr. Butler was present to ask for amendments altering the terms of subscription for the extension of the canal to the Ohio river. The earlier act required a subscription of not less than \$2,250,000 to complete the canal. The amendment stipulated that the bill should become effective when bonds to the amount of \$4,000,000 had been surrendered and a subscription equal to 20 per cent of this or \$800,000 for the completion of the canal should have been made. The bondholders demanded furthermore a priority in payment to them of all their bonds surrendered under the new law.

The presentation of these amendments reopened for a brief time the whole question of the payment of the debt. The weakness of the opposition is shown by the tactics resorted to on this occasion.<sup>46</sup> The bill as amended passed without serious opposition January 27, 1847,<sup>47</sup> and nothing further stood in the way of a final consummation of the plan. Mr. Dowling wrote from New York on May 7 that the mails from England which had just arrived contained the acceptance of the terms of the act. By May 11 the bondholders elected their trustees,<sup>48</sup> and before the close of that month \$6,353,000 in bonds had been surrendered.<sup>49</sup>

The action of the legislature in enacting the Butler bill was generally very popular at the time,<sup>50</sup> though certain opponents adverted to the bonds fraudulently obtained

<sup>46</sup> "British brokers," "British lawyers," "Tory agent," "lobby influence" were epithets flung at the supporters of the measure. *Tippecanoe Journal and Free Press*, Jan. 21, 1847; Jan. 28, 1847.

<sup>47</sup> *General Laws, 1846-7, Ch. I, p. 3.*

<sup>48</sup> Chas. Butler, of New York, and Mr. Thomas H. Blake, of Indiana.

<sup>49</sup> *Tippecanoe Journal and Free Press*, June 17, 1847.

<sup>50</sup> "The cannon fired, the bells rang, the city was illuminated, and all was joy and hilarity at the capital for weeks afterward." Early Indiana Trials, O. H. Smith. The Senate of the United States endorsed it as the best that could be adopted under the circumstances. *Senate Report, No. 86, p. 3, 1847-8.*

by the Morris Canal and Banking Company and contended that these ought to be repudiated. In reply, it was held that the state's authorized agent had placed the bonds in circulation; that these had passed to other hands than the original purchaser's; that they had been recognized as binding and such compensation as a bankrupt company could give had been accepted from the Morris Canal and Banking Company; and that the question at issue was to regain the credit of the state.<sup>51</sup> The situation was so similar to the one which called forth Hamilton's famous arguments for the payment of the domestic debts by the Federal Government as to lead to frequent comparisons. In the compromise with the creditors all the conditions of a fair settlement were apparently met. Somewhat more liberal terms for the payment of interest being granted to the state, and its responsibility for one-half the debt, principal and interest, shifted for the time to the canal trustees, while the creditors expected the ultimate payment of the debt in full. As a result business interests profited as quickly and completely as possible from any other plan of apparently complete satisfaction to the creditors. State credit was immediately strengthened. The value of its lands and taxable property increased. The stigma of repudiation and financial dishonor was removed.<sup>52</sup>

#### THE ADMINISTRATION OF THE TRUST

The Butler bill created a Board of Trustees to administer the trust,<sup>1</sup> and when it met in May for organization, Mr. Charles Butler was chosen its first president.<sup>2</sup>

<sup>51</sup> Tippecanoe Journal and Free Press, Feb. 26, 1846.

<sup>52</sup> Memorial of Holders of Certificates of Stock, Doc. Journal, Part II, No. 23, 1856.

<sup>1</sup> Sec. 14, Act of Jan. 29, 1847.

<sup>2</sup> Other officers of the board were Jesse L. Williams, of Fort Wayne, Chief Engineer, and J. Ball, of Terre Haute, Resident Engineer. In addition, there were two superintendents to correspond to the two general divisions east and west of Lafayette. Some years later the canal was divided for convenience of superintend-

The newly organized board of trustees was then authorized by the Governor to take possession of the canal and after due formalities received charge of its trust July 1, 1847.<sup>3</sup>

While the public attention was directed largely to methods of settling the debt, the canal commissioners had been slowly pushing the southern terminus forward. Congress accepted the course taken by the state and each time an extension was authorized permitted the state to select lands as granted by the original act of 1827.<sup>4</sup> One of the more popular features of the Butler bill was the clause providing a definite method of accomplishing the completion of the waterway from the lakes to the Ohio river. Both bondholders and citizens seemed to agree on the advisability of the extension from a business standpoint.<sup>5</sup>

Such was the status when the trustees took charge of the canal.<sup>6</sup> They reported at the end of the canal season, in their first annual report, that there still remained unfinished 36 miles between Coal creek and Terre Haute with little work done beyond that section; that the finished parts were already in need of extensive repairs and renewals; and that they were obliged to begin these at a large cost. While the canal was navigable to Coal creek, yet from Lafayette south boats were unable to carry more than two-thirds of

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ence into nine divisions with a superintendent in direct charge of each. The general offices of the Board of Trustees were at Terre Haute. See Annual Report of Trustees, Doc. J., Part II, No. 6, 1847; Dec., 1851, Doc. J., No. 7, Part I, p. 243; Tippecanoe Journal and Free Press, July 1, 1847.

<sup>3</sup> Report of General Superintendent, Doc. J., Part II, No. 11, 1847.

<sup>4</sup> Revised Statutes U. S., Vol. V, pp. 414, 731.

<sup>5</sup> Chas. Butler, Letter to the legislature, Dec. 19, 1845; Tippecanoe Journal and Free Press, March 23, 1842; Aug. 7, 1845; U. S. Senate Docs. No. 202, 28th Congress; No. 78, 28th Cong., 1st Sess.; Ex. Docs., No. 83, 2d Sess. 28th Cong.; Cp. petitions to Congress, Jan. 21, 1843, Jan. 25, 1844, Jan. 13, 1845.

<sup>6</sup> The state still retained the following parts of its internal improvement system of 1836; New Albany and Vincennes turnpike; Northern division of the Central canal; Erie and Michigan canal. All were controlled by a board consisting of the Secretary of State, Treasurer, and Auditor. Auditor's Report, Doc. Journ. No. 2, 1847, p. 78.

a load on account of the poor construction of that section.<sup>7</sup> The work of extension proceeded slowly and the canal was not opened to its final terminus, Evansville, on the Ohio river, until the spring of 1853.<sup>8</sup> When completed it was 458½ miles in length.<sup>9</sup>

The period from 1847 to 1856 may be regarded as the hey-day of the canal. Until 1853, there was a steady increase in the income from tolls and water rents and a decreasing annual average cost of repairs and maintenance. The tolls and rents reached \$193,400.18 in 1852. This was the highest amount received from this source. From that date the income steadily decreased.<sup>10</sup>

Several factors contributed to a decided falling off in the tolls for 1853. In 1852 the trustees arranged in conjunction with the Ohio Board of Public Works for a 40 per cent.

<sup>7</sup> Annual Report of Trustees, Doc. Journ., Part II, No. 5, 1847.

<sup>8</sup> Ibid., Dec. 28, 1853.

<sup>9</sup> Late in 1852 the citizens of Williamsport constructed a side-cut and forcibly let the water in this, thus lowering the supply in the main canal. This action was the culmination of an effort to compel the trustees to construct side cuts in accordance with the original plans. The trustees had successfully resisted mandamus proceedings and the citizens then took forcible action. The effect was to seriously and permanently impair the canal south of Lafayette. Cp. Annual Report of Trustees, Doc. Journ. No. 7, part II, 1853.

<sup>10</sup> Summary of tolls and rents during the continuance of the trust and a comparison with the expectations as shown by an estimate of the engineer in 1846:

	Received.	Estimated Income.
1846.....	\$105,233.33.....	\$150,000
1847.....	125,982.00.....	175,000
1848.....	146,148.90.....	225,000
1849.....	134,659.00.....	330,000
1850.....	157,158.38.....	390,000
1851.....	179,282.76.....	425,000
1852.....	193,400.18.....	450,000
1853.....	181,206.98.....	475,000
1854.....	180,535.33.....	500,000
1855.....	140,399.53.....	500,000
1856.....	113,423.47.....	500,000
1860.....	65,073.83.....	500,000
1864.....	51,921.32.....	500,000
1868.....	47,529.69.....	500,000
1871.....	50,227.26.....	500,000
1873.....	17,086.94.....	500,000
1874.....	7,179.61.....	500,000

reduction in the tariff of tolls.<sup>11</sup> This action was taken to accord with the policy of the trustees to reduce the cost of transportation to the lowest possible figure and thus increase the popularity of the canal and discourage the tendency towards railroad construction. The year 1853 was one of inferior crops along the canal. In addition to these two factors the following statement in the trustees' report is significant of a more permanent source of loss, "A small portion of the produce and merchandise hitherto taking the canal as its natural channel has this year been drawn off by newly opened railroads."<sup>12</sup> And again, "The anticipated addition to the revenue from the extension of the canal to the Ohio river has not yet been realized."<sup>13</sup> Such was the condition at this critical point. Causes over which the administrative board had no control reduced the revenues by nearly seven per cent. and increased the cost of repairs and maintenance by five per cent.

Again, certain fundamental defects in the canal as a means of transportation turned the tide against it. The season of navigation was limited to less than eight months;<sup>14</sup> storm and flood interfered still further, and interruptions of a fortnight or a month or even two months were common events. Thus the products of the farm and factory were too often forced to lie for weeks tied up in shallow water or stopped by a broken embankment. The canal had in the first place stimulated business enterprises, and now as these grew stronger they demanded better facilities. As a result, dissatisfaction with the canal increased because it was inadequate to business needs. The newspapers abounded in complaints of this character, and with items describing "boats which scraped through," and "boats aground."<sup>15</sup>

<sup>11</sup> Annual Report of Trustees, p. 5, 1853.

<sup>12</sup> Ibid., Dec. 28, 1853, p. 5.

<sup>13</sup> Ibid., p. 6; Cp. reports for 1849 and 1850, Doc. Journ. No. II, Part II, and No. 3, Part II.

<sup>14</sup> Average for period 1846-1858.

<sup>15</sup> Evansville Enquirer, May 28, 1856; Tippecanoe Journal and Free Press, June 1, 1843; Aug. 21, 1845; Sept. 4, 1845.

At this juncture when the canal was failing to meet the business demands of the Wabash valley, capitalists from the East began to construct a railroad from Toledo westward, parallel to the canal.<sup>16</sup> Even earlier than this a railroad<sup>17</sup> had been begun from Evansville to Vincennes and built northward toward Crawfordsville and Lafayette.<sup>18</sup> The result was that business men everywhere hesitated to invest money in canal boats; new ones were not built to take the place of those worn out and decayed, and men who had made investments in canal property now got out of the trade. The trustees were helpless, being prohibited by law from all participation in the business of transportation. They could neither own boats nor be concerned in their ownership. This compelled them to rely solely on the enterprise of such private citizens as might choose to embark in this traffic.<sup>19</sup>

The embarrassment of the trustees was greatly increased by a decision of the state Supreme Court compelling them to use the net revenues of the portion of the canal between Lafayette and the Ohio state line to pay the interest on the certificates of canal stock issued in place of the original Wabash and Erie canal bonds. These certificates now claimed a priority over the other bonds issued under the Butler bill. The more serious feature of the decision was that it deprived the board of funds greatly needed for repairs.<sup>20</sup> As a source of revenue, the rental of water power along the line proved a failure.<sup>21</sup>

<sup>16</sup> The Wabash Valley railroad was completed to Lafayette, June 20, 1856.

<sup>17</sup> Annual Report of Trustees, Jan., 1853, Doc. Journ. No. 7, Part II.

<sup>18</sup> The canal south of Terre Haute was never fairly tested, as the railroad was in course of construction almost at the time of completion of the canal. There were never more than 33 boats used in the navigation of this portion.

<sup>19</sup> Annual Report of Trustees, Jan., 1859.

<sup>20</sup> The more valuable portion of the canal was east of Lafayette and the effect upon the funds for ordinary repairs was disastrous. *Ibid.*, 1853, p. 8; 1856, p. 277.

<sup>21</sup> *Ibid.*, 1850, p. 144.

The trustees' report for 1854 brought the same record of disappointment. A slight increase in the gross tonnage east of Lafayette told in a still more significant manner the effect of railroad competition. Bulky goods like corn, iron, and lumber—articles which paid light tolls—constituted its main traffic. Goods which paid the highest tolls had been diverted to the railroads to save time. "It is in the diversion of this class of business that the revenues are likely to be impaired by the railroad system," the trustees wrote.<sup>22</sup> Another consequence of railroad competition appeared almost at once. Since 1843, when packet lines of boats had been placed on the canal to take care of the passenger traffic, this had grown to be a popular and valuable part of its business. The railroads now did this so much more satisfactorily to the traveling public that the packet lines were entirely withdrawn.

For 1855, the canal tolls decreased 50 per cent from the preceding year. Year by year recorded in rapid succession the passing of one product after another from the control of the canal. Hitherto, hogs dressed and packed along the route had sought eastern markets, but with rapid transit appeared at once the centralization of this industry. Dressed hogs were sent in large quantities from Lafayette, Terre Haute, and Evansville to Cleveland by railroad, there to be cut and packed. In turn, pork in barrels and tierces were returned by the packers to the various starting points, destroying the business of local packers.<sup>23</sup>

In spite of an effort to retain business by a still further reduction of tolls the total tonnage rapidly declined more than one-half in four years.<sup>24</sup> As the trustees put the mat-

<sup>22</sup> Annual Report of Trustees, 1854, p. 807.

<sup>23</sup> Ibid., 1856, p. 120.

<sup>24</sup> 1855.....total tonnage, 252,152  
1856....." " 308,667  
1857....." " 149,473  
1858....." " 200,472  
1859....." " 137,819

Ibid., 1855, p. 120.

ter, "The results of the year's business show too plainly that the canal cannot successfully compete with the railways for that class of traffic, which from its greater value in small bulk and weight can afford to pay a greater charge for transportation."<sup>25</sup>

Public interest in the canal rapidly waned. The merchants had come to realize that the railroads afforded them a quicker, cheaper, and more certain communication with the eastern cities. Of a particular consignment by railroad it was said, "The time consumed in the carriage was marvelously short and comparison of freight bills quite satisfactory to a due sense of economy."<sup>26</sup> For weeks before the railroad was completed to Lafayette, drovers held back their stock for the new transportation.<sup>27</sup> In the month of August, 1856, during one period of 24 hours, the Wabash railroad carried into Toledo one hundred carloads of farm products.<sup>28</sup> Corresponding losses resulted for the canal. A further decline of fifty per cent in tonnage came in 1857.<sup>29</sup> The clearances at Fort Wayne and Lafayette scarcely amounted to one-fourth of those issued at the same points in 1854.

South of Terre Haute the disparity between the receipts and expenditures was so great as to force the inquiry whether the work could be longer maintained.<sup>30</sup> The following year, 1858, the holders of the canal certificates joined in the recommendation that the canal be suspended south of Terre Haute and petitioned for legislative relief giving the trustees the right to sell the canal lands and receive for them the certificates issued for the \$800,000 advance.<sup>31</sup> The

<sup>25</sup> Annual Report of Trustees, 1856, p. 276.

<sup>26</sup> Lafayette Daily American, June 12, 1856.

<sup>27</sup> *Ibid.*, May 17, 1856.

<sup>28</sup> *Ibid.*, August 23, 1856.

<sup>29</sup> Report of Engineer, 1857-8, No. 3, Pt. I, p. 350.

<sup>30</sup> South of Terre Haute—Expenditures, \$40,556.86; revenues, \$7,998.35. North of Terre Haute—Expenditures, \$5,694.46; revenues, \$60,165.08. See Annual Report of Trustees, 1857, p. 175.

<sup>31</sup> There were 135,000 acres of unsold land in this section, valued at \$276,713.30. Annual Report of Trustees, 1858, pp. 286, 289.

trustees asserted that the canal as a whole could no longer operate as a security for the bondholders nor could they have any interest in it as such.<sup>32</sup>

The worst phase of the canal's decline in business arose from the loss of the return cargo. Boats from canal points to Toledo found an abundance of bulky products with which to load but they were forced to return empty because the more valuable merchandise bound westward had been diverted to the railroads.

The canal creditors held the state responsible for the destruction of the trust. "Caused by the authority given to private individuals to compete for the business of transportation" was their indictment.<sup>33</sup> They held that by the statute authorizing private companies to construct railroads the state had deliberately destroyed the very trust it had pledged its faith to maintain inviolate; that this act obligated Indiana to pay the bonds. This claim was a bitterly controverted one. The creditors argued in a memorial dated March 6, 1857, that the state had induced their acceptance of the terms of the act of 1847 under representations that this was to remain the channel of transportation for the Wabash valley, subject only to the competition of the Wabash river. That the failure of the canal had not been due to natural causes as extravagance, failure to complete the canal, nor to a less rapid increase of population than was expected, nor competition with the river; but to the state's action in authorizing railroads. "Neither natural causes nor depreciation arising from the creditors' own acts but deliberate acts and authorization by charter to railroads had ruined the creditors' security." The memorialists did not question the right or spirit of the legislature's action, but held that the state in choosing such a course did so at its own cost and not at the cost of others; that it could not ignore interests which it had already created nor impair securities which it had guaranteed from molestation and

<sup>32</sup> Annual Report of Trustees, 1858, p. 282.

<sup>33</sup> Ibid.

wrong; that in cases of this kind the state was bound to make reparation.<sup>34</sup>

In the consideration of this question it must not be forgotten, on the other hand, that the creditors took the canal with the usual trade risks. As Mr. Butler, in seeking to induce the legislature to accept his proposals, had said, "If the revenues fall short the bondholders will lose." To be sure, if the canal had been a successful enterprise, the state would have realized all the benefits, while the bondholders could have received no more than the principal and interest of the debt. Still both parties were satisfied with the settlement of 1847 at the time it was made and regarded it as final. Nothing in that agreement could bind the state to neglect to provide for the development of its own resources and to open new channels of communication absolutely essential to the welfare of its people in order to preserve an antiquated public work. That there was no legal obligation of the state under such circumstances there can be no doubt. That question has been thoroughly considered by the Supreme Court in the case of the Charles River Bridge Co. vs. Warren Bridge Co.<sup>35</sup> As to the moral obligation of the state to reimburse the creditors because it had destroyed their security in order to profit by a new system of transportation, there may be a difference of opinion, but the prevailing practice to-day is against recognizing such an obligation. At all events, the state completely ignored the claims of the bondholders, and took prompt action to make it more difficult for future legislatures to recognize any obligation.

At the time of the debt settlement in 1847 one hundred and ninety-one old Internal Improvement bonds, issued between 1832 and 1842 for the construction of the Wabash and Erie canal, were not surrendered and canal certificates taken in their stead. That is, these had not accepted the terms of the Butler act. Representatives of these now

<sup>34</sup> Annual Report of Trustees, Doc. Journ., 1857, Part II, No. 3.

<sup>35</sup> Cp. the opinions of Taney, McLean, and Story in the famous case of Charles River Bridge vs. Warren Bridge, 11 Peters, 420.

brought suit in the Circuit court of Carroll county to enforce a lien against the canal.<sup>36</sup> To allow the enforcement of the lien was to deprive the canal stock holders of their trust by state action and consequently force the state to a settlement with them. That is, so far as the half of the debt resting on the canal was concerned, to go back to the status of 1846. This was just what the state authorities desired most to ward off. The legislature hastily assembled and made provision for the payment of the old unsurrendered bonds.<sup>37</sup> The whole matter caused considerable alarm, in view of the inevitable failure of the trust, lest by some means the state might be forced to assume again the canal certificates as a part of its debt. To forestall such an action an amendment to the constitution was ratified in 1873. This forbade the passage by the legislature of any law or resolution which should recognize any liability of the state to pay or redeem any of the canal certificates.<sup>38</sup>

In 1858 the trustees were called upon to meet a large deficit, which was done by using the proceeds of lands belonging to the trust.<sup>39</sup> But, at best, this was only a temporary expedient.<sup>40</sup> As a climax an injunction was sued for in the following year to restrain the trustees from using any funds but tolls and water rents for repairs. The granting of the injunction forced the trustees to use the proceeds of the lands to the payment of the bondholders' advance for the extension to the Ohio river.<sup>41</sup>

<sup>36</sup> Forty-one of these were held by John W. Garrett, of Baltimore, who brought the suit. Doc. Jour. Ind., 1870, Part II, No. 10.

<sup>37</sup> Act approved Dec. 12, 1872.

<sup>38</sup> Ind. Doc. Jour., 1872, No. 7; Annual Report of Trustees, 1870, Part II, No. 6; ibid., 1874, p. 6; Poore, Charters and Constitutions, Part I, p. 527.

<sup>39</sup> Tolls and water rents for 1858 were \$63,996.44; expenditures were \$143,824.56; deficit amounted to \$79,828.19. Annual Report of Trustees, 1859, p. 287.

<sup>40</sup> There remained unsold in the Vincennes district 135,000 acres of land valued at \$276,713.30, and in addition \$66,457.48 was expected from principal, interest and unsold lands belonging to the districts east and west of Lafayette. Annual Report of Trustees, 1859, p. 286.

<sup>41</sup> Ibid., 1858, p. 294.

Strenuous efforts were made to curtail the expenses of administering the trust. Employees whose services could possibly be dispensed with were dismissed and other salaries were lowered, but without the means to make the needed repairs in the spring, the canal was useless. Only the enterprise of a few citizens advancing money for repairs made it possible to operate the canal during 1859. These took contracts to make repairs, accepting the tolls and rents as their security.<sup>42</sup> This policy was extended in 1860 by granting these citizen-contracts by sections for a term of four years. It was hoped that in this way there would be formed such a league of business men interested in the canal as would make possible successful competition with the railroads. The eastern section paid the contractors very well but before the end of the first year those on the southern section applied for release.<sup>43</sup> An attempt was made to keep open the portion from Newberry to Terre Haute but in 1862 it became necessary to abandon the entire canal south of Terre Haute.<sup>44</sup> The rapid decline in its traffic is partly illustrated by the falling off in the number of boats employed. Two-thirds of those employed in earlier years were now decaying in the docks or entirely destroyed.<sup>45</sup>

Other attempts were made to sustain navigation on the canal. In 1862 a contract was made with a company<sup>46</sup> to maintain the portion from Terre Haute to the Ohio state line until 1873 on the same terms as the earlier contracts.<sup>47</sup>

<sup>42</sup> Annual Report of Trustees, 1859, pp. 294-5.

<sup>43</sup> Ibid., 1860, p. 273.

<sup>44</sup> One year the city of Terre Haute gave a firm \$1000 and the tolls to maintain a short section between that city and the Eel river as a municipal enterprise. An effort was made in 1862 to keep up the 40 miles of canal to Washington for the benefit of local merchants by means of voluntary contributions. Annual Report of Trustees, 1862, p. 457.

<sup>45</sup> The number of boats employed in 1854 was 300; for 1858, 175, and for 1861, 100. Annual Report of Trustees, 1861, p. 385.

<sup>46</sup> Hugh McCulloch, Alfred P. Edgerton and Pliny Hoagland constituted this company.

<sup>47</sup> That is, for the tolls and water rents.

Financially this could no more succeed than the earlier attempts. Repairs not immediately required were neglected, and the canal gradually deteriorated. In the spring of 1866 these gentlemen admitted their inability longer to maintain the canal without increased capital and extended repairs beyond their ability. Accordingly, a stock company was at once formed, composed of business men willing to subscribe stock. The capital stock was \$200,000.<sup>48</sup> The company agreed to maintain the canal until July 1, 1878. Such a contract was for all practical purposes a surrender of the trust to this company for a term of years. It collected the tolls and rents and disbursed them. The trustees reserved merely a control over the tariff of through traffic tolls. So far as the creditors were concerned there was no longer any object in the existence of the trust, unless the arrangement should be successful enough to make the canal profitable after the expiration of the contract in 1878.

The immediate result of interesting so many in the success of the canal was to greatly stimulate its activity for three or four years, but no business man would long sacrifice his need for more rapid shipping facilities to sustain artificially an unpopular enterprise.<sup>49</sup> After 1869 the company lost money each year that it attempted to keep the canal open.<sup>50</sup> By 1873 through traffic was impossible. "The canal," the trustees wrote, "has been less productive of revenues, and conferred less benefit upon the country and its shipping interests than during any preceding year."<sup>51</sup> The disconnected sections could not have been kept open during 1873 except for aid given along the line.

<sup>48</sup> Three hundred and seventy-nine individuals subscribed \$158,525 capital stock. The company was represented by a board of managers of one for each \$10,000 of stock. From this board an inner executive committee was selected and a general superintendent chosen.

<sup>49</sup> Report of Trustees, 1867-8, p. 3; 1869-70, p. 5.

<sup>50</sup> The status of a canal having no deep water connections at both ends is quite different in competition with railroads from one like the Erie or the Sault Ste. Marie.

<sup>51</sup> Report of Trustees, 1873, p. 6.

The legislature at its session in 1873 authorized counties along the route to subscribe funds to its aid. Under this law a sum sufficient to keep the canal open for the year was secured,<sup>52</sup> yet even this relief was but temporary. The canal company had lost so heavily<sup>53</sup> that it intimated at the end of 1873 the intention of abandoning its contract, and, accordingly, did not reopen the canal in 1874.<sup>54</sup>

During 1874 the trustees, on their part, made no attempt to do more than protect the property and maintain navigation as far as the tolls and rents would allow.<sup>55</sup> The canal was in a bad state of repair. Locks everywhere needed rebuilding, and the entire canal required a thorough dredging.<sup>56</sup> The engineer estimated that \$500,000 would be necessary to put it in shape for further use.<sup>57</sup> Traffic had become purely local.<sup>58</sup> It was clearly recognized that the trust must fail and the canal be abandoned entirely.

The bondholders, hopeless of securing any recognition from the state, with a bankrupt canal on their hands, brought suit in the United States Circuit court to secure the sale of the canal for the benefit of the stockholders. This did not, of course, apply to the portion of the canal in Ohio which had, since its construction, become a part of the Miami and Erie canal system. That is, the Ohio portion of the Wabash and Erie canal, a strip twenty miles in length, was for administrative purposes a part of the Miami canal, and until 1861 was under the management of the Board of Public Works, when, in conjunction with

<sup>52</sup> The counties subscribed \$50,000, and \$40,216.15 was expended on the canal. Report of Trustees, 1873, p. 3.

<sup>53</sup> The Canal Company expended, 1866-1874, \$436,345.52 for maintenance; it received in tolls and rents \$274,019.41, together with \$40,216.13 from county donations. There was a loss of \$122,109.98. Report of Trustees, 1874, p. 4.

<sup>54</sup> Engineer's Report, Ex. Doc. No. 14, Part II, 1874, p. 16.

<sup>55</sup> Annual Report of Trustees, 1874, p. 3.

<sup>56</sup> Ibid., p. 22.

<sup>57</sup> Report of Engineer, 1874, p. 10.

<sup>58</sup> Ibid., pp. 10-15.

Ohio's other canals, it was leased to a company for ten years. When the Wabash and Erie canal was abandoned in 1874 the Ohio section was in good condition and repair, but the abandonment in Indiana practically destroyed that in Ohio as far as the junction and depreciated greatly the value of the canal from that point to Toledo. For some years a short spur westward from the junction to Antwerp, Ohio, was operated. That state complained bitterly of Indiana's failure to maintain her part of the canal as a breach of the compact made with the United States and with Ohio itself.<sup>60</sup> The suit of the Indiana bondholders, just referred to, took the form of enforcing a lien against the property pledged for the payment of the certificates.<sup>61</sup> As a result the court ordered the sale of the canal. The accounts were transferred to the court and a receiver was appointed. The property with the right of way and lands was sold to speculators,<sup>62</sup> but no attempt was made to repair and maintain the canal. The water-power at several points continued for some years to furnish a small income to its purchasers. The canal rapidly fell into complete ruin. The bondholders received from the sale about 9½ per cent. of their investment.<sup>63</sup> Various suits over land title made the process of closing the receivership a tedious matter.<sup>64</sup> As a money-making institution the canal had

<sup>60</sup> Ohio Ex. Docs., 1857, Pt. I, p. 467; ibid., 1858, Pt. II, p. 112; ibid., 1862, Pt. II, p. 575; ibid., 1874, Pt. I, pp. 574-575; ibid., 1875, Pt. II, p. 689; ibid., 1881, Pt. I, p. 1083; and Cp. Annals of the Am. Acad., IV, Part II, p. 34.

<sup>61</sup> Garen vs. Trustees, filed Nov., 1874.

<sup>62</sup> Canal sold, Feb. 12, 1877.

<sup>63</sup> 1854—Trustees paid bondholders 20 per cent instalment on \$800,000 subscribed to complete the canal.

1855—Trustees paid 10 per cent instalment.

Received from sale of canal.....	\$96,260.00
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May 23, 1878, first dividend, 8 4-10 per cent.....	66,033.25
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Second dividend, 1 1-8 per cent.....	8,174.08
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<sup>64</sup> Receiver's petition for discharge accepted Oct. 2, 1897.

failed.<sup>64</sup> Its economic, social, and political influence remains to be considered.

<sup>64</sup> Fiscal Summary, Wabash and Erie canal.

Expenditures:

For construction to July 1, 1847.....	\$4,062,573.14
For construction, July 1, 1847-Dec. 1, 1874.....	2,375,236.62
Paid in interest .....	605,370.93
Ordinary repairs .....	631,000.05
Extraordinary repairs .....	211,411.11
Salaries and office expenses .....	373,652.18

\$8,259,244.03

Receipts:

From lands and revenues to 1847.....	\$1,573,106.33
From lands and revenues, 1847-1874.....	3,904,132.08

\$5,477,238.41

## CHAPTER III

### INFLUENCE ON THE DEVELOPMENT OF THE OLD NORTHWEST

It is only within recent years that historical writers have given proper consideration to the influence of physical geography upon national history. The general relation between natural routes of trade and travel, and national expansion is now quite fully recognized. Writers have repeatedly emphasized the basic principle underlying the territorial growth of the United States: that migration, settlement, and the succeeding commercial and social communication have taken place along those lines which offered the least resistance to such movements; that these physical factors have not only determined the location and course of the westward movement, but by facilitating communication they have bound section to section and have hastened the assimilation of inflowing foreign population. But very little has been done to present adequately the influence of individual highways like the Erie canal,<sup>1</sup> the Pennsylvania State canals and inclined tramways between Philadelphia and Pittsburgh, the National road,<sup>2</sup> and the Chesapeake and Ohio canal,<sup>3</sup> or rather the earlier routes which suggested these later artificial works. Moreover, almost nothing has been written of the western connections of these highways.

In any attempt to write the history of the Old North-

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<sup>1</sup> Poor's Railroad Manual, 1876-7 and 1881. The Canal System of New York, McElroy, 1881. Mervin S. Hawley, Origin of the Erie Canal, Pamphlet, Buffalo, 1866.

<sup>2</sup> T. B. Seabright, The Old Pike, 1894.

<sup>3</sup> Ward, The Chesapeake and Ohio Canal, Johns Hopkins University Studies, 17th Series, 1899.

west or indeed of the larger middle West,<sup>4</sup> it does not suffice to trace the inflow of the immigrants through the great Appalachian gateways. The story is but half told when the population is carried across the great eastern mountain barrier separating the Atlantic coast settlements from the broad expanses of the interior plains. There are certain distributing forces which must be taken into account. The tide of westward movement flowed now faster now slower, now hither and now thither for very definite reasons. At one time the flow is far around into the interior by circuitous routes,<sup>5</sup> again it sets directly across the mountains into the Ohio valley by central routes,<sup>6</sup> and finally it pours steadily into the north of this territory by the Erie canal and the lakes. From whichever gateway the settler entered, he always found some valley or some navigable waterway to invite him to push onward.

The Wabash route formed one of these natural highways. To the French colonial system which involved magnificent distances it was of the utmost importance, offering a direct course for travel and trade between its empire on the Mississippi and New France. The French colonies never became vigorous, self sustaining, and economically independent settlements; but the degree of stability attained and the marvelous rapidity with which French institutions swept over the great valleys of the West were only possible where interlacing water-courses made communication from post to post both easy and speedy. It is not too much to assert that the physical geography of North America was the greatest factor in determining the history of French colonization in the new world.<sup>7</sup> It is,

<sup>4</sup> The valleys of the Mississippi, the Missouri and the Arkansas invite the same consideration of the influence of individual natural and artificial highways, with this difference, that coming late in the era of expansion the emphasis should be placed almost wholly on great interstate lines of railroad.

<sup>5</sup> By the Ottawa river and the upper lakes.

<sup>6</sup> The Potomac route or the Pennsylvania overland trail.

<sup>7</sup> N. Y. Col. Docs. V, pp. 726-7.

however, to be noted that all the interior waterways were to the French only canoe courses and as such never came to carry any considerable volume of trade. It is not the volume, but the fact of any trade and communication at all that is significant. The movement of merchandise for Indian barter and of the inhabitants between trading posts and missions was obviously essential to any economic progress or to any centralized political system.

Such routes were immensely more important in the era that preceded the construction of railroads than in the years since these have, in a measure, overcome the influence of physical barriers. A century or more ago, a river or a sea coast was a boon of great value to a country, far beyond their present significance. The physical geography of the great valleys is the key to the French method of occupation in America. Its great interlacing waterways drew the hardy adventurous voyagers ever farther inland until a great empire was held under an attenuated colonial system. These nature-made canoe paths invited the settler to the less arduous, more romantic life of the trader instead of the planter. The sturdy husbandman of the English colonies became with the French the *courieur de bois*.

When the English came to possess the great interior territory and to plant homes in the place of the trader's post and the priest's mission, the value of the commercial routes increased rapidly. Elsewhere it has been shown<sup>8</sup> that the Wabash and Maumee rivers connecting a chain of trading posts and settlements<sup>9</sup> were in continuous use by the English in the brief period in which they possessed that territory. The British occupation of the frontier posts for many years after the Revolution and the hostility of the neighboring Indians, doubtless due in part to the instigation of emissaries from the English posts, turned the

<sup>8</sup> See ante p. 31.

<sup>9</sup> Detroit, Fort Miami, Ouiatanon and Vincennes.

western immigrant away from the lake region for many years.<sup>10</sup> Indeed, with the American Revolution the Wabash route ceased for a long period to exert any considerable influence in a political sense, limited as the trade must have been to the trapper and fur dealer. Other channels took its place in directing the course of immigration and the rising commerce. The bulk of traffic moved by Pittsburg to the Ohio valley until the construction of the Wabash canal gave this route once more its former prominence.

The Old Northwest territory is peculiarly adapted to the development of a system of canals. The broad strip stretching between the Ohio river on the south and the lakes in the north is to a remarkable degree void of elevations deserving the name of mountains or even, with some exceptions near the border to the east and south, of prominent hills. Throughout it is a vast plain with sluggish streams. Broad alluvial valleys follow the larger streams and invite the construction of canals and railroads. Over a large portion the inclination is so slight as to necessitate drainage to make agriculture profitable. Through such a country canal construction was naturally economical. Few locks were necessary. Material like timber and stone was close at hand.<sup>11</sup>

The friends and promoters of the Wabash and Erie canal understood clearly the influence such a work would have on the development of the Northwest. Prophecies were abundant.<sup>12</sup> Everywhere the same high expectations for the future of the region, if the canal should be constructed, were expressed. The messages of governors became almost panegyrics in their recommendations to the legislatures. Legislative committees issued long reports on the subject. Aspiring politicians and members

<sup>10</sup> Justin Winsor, *The Westward Movement*, p. 412.

<sup>11</sup> H. S. Tanner, *A Description of the Canals and Railroads of the United States*, New York, 1840.

<sup>12</sup> Tippecanoe Journal, July 28, 1842; Toledo Blade, June 17, 1842.

of Congress alike indulged in wild and extravagant assertions of the inevitable benefits to accrue to the commonwealth from the construction of the canal. Such was the general enthusiasm at the start.

It was not long after its construction, before the Senate Committee on Public Lands bore testimony to the fact that the building of the canal had enhanced the value of real estate, increased greatly and rapidly the population, promoted agricultural industry because it was now better rewarded, and facilitated and fostered commerce between the states.<sup>13</sup> But better than the assertion of the Federal Senate committee are the records of the United States Census and Public Land Office for the district of Indiana. The rapid increase of the value of real and personal property in the state during the years marked by the rise of canal traffic is clearly shown by these documents.<sup>14</sup> A period of twenty years, 1840 to 1860, marked an increased valuation of more than five-fold. Again, the average annual public land sales in Indiana point to the same rapid development.<sup>15</sup> During one year, 1836, when popular enthusiasm was at its highest more than three million acres of land were sold.<sup>16</sup> Perhaps these facts can be taken as indicating economic influences in a general way. Naturally the land sales reached a maximum at an early period, while the wealth of the state became more conspicuous in

<sup>13</sup> Senate Document, No. 202, 28th Cong., 1 Sess., Vol. IV, March 18, 1844.

<sup>14</sup> Real and personal valuation in state:

For 1840 .....	\$100,000,000.00
For 1845 .....	120,000,000.00
For 1850 .....	202,650,264.00
For 1860 .....	528,835,371.00

See Preliminary Report, Eighth Census, p. 195; Niles' Register, March 20, 1841, Vol. X, p. 40.

<sup>15</sup> Average annual land sales by periods of five years:

1820-24 .....	199,931.35 acres.
1825-29 .....	233,898.59 acres.
1829-34 .....	561,194.22 acres.
1834-39 .....	1,441,354.33 acres.

See Ex. Doc. U. S., 1 Sess., 26th Cong., Vol. III, No. 120, p. 8.  
<sup>16</sup> 3,016,960 acres. See Tenth Census, Vol. VII, p. 618.

the years when the canal trade had had an opportunity to develop. The fact must not be ignored that these statistics are for the entire state, though the greater proportion of the land sales were in the Wabash valley.<sup>17</sup> Other states have developed as rapidly, but not without natural or the equivalent artificial aids for travel and trade.

It would be a mistake to attribute this rapid growth wholly to the Wabash and Erie canal, or to the system of improvements in Indiana. The completion of the Erie canal opened the West to the East, doing more than any other one factor to stimulate such a movement of the population. The Wabash canal like the Ohio canals was merely a branch of a great trunk system of which the Erie canal and the lakes were the main stem, turning home-seekers and business into Indiana instead of elsewhere. The Ohio canals did as much for Ohio.<sup>18</sup> This relation between the Erie canal and the western canals is illustrated in Governor Clinton's correspondence with Major Stickney. The latter had communicated to Clinton in 1818 his project for the Wabash canal. Governor Clinton replied with considerable enthusiasm, "I have found the way to get into Lake Erie and you have shown me how to get out of it..... You have extended my project six hundred miles."<sup>19</sup>

When the first work of construction was begun the upper Wabash valley was a wilderness,<sup>20</sup> but within a decade following, it was peopled with industrious and enterpris-

<sup>17</sup> Ex. Doc. U. S. 1 Sess., 20th Cong., No. 120, p. 4.

<sup>18</sup> The Miami canal connected Cincinnati with Toledo; the Ohio joined the Ohio river at Portsmouth with Lake Erie at Cleveland. Shorter branches completed the network. These two main lines crossing the state distributed business and population more evenly.

<sup>19</sup> H. L. Hosmer, *Early History of the Maumee Valley*, p. 23. The portion quoted is from MS. autobiography of Major Stickney.

<sup>20</sup> *Lafayette Free Press and Commercial Advertiser*, Feb. 6, 1835; Committee on Canals and Internal Improvements, House Journals, 1835; *Statistical Atlas, Ninth Census, U. S.*, Plate XVI; Knapp, *History of the Maumee Valley*, p. 337.

ing citizens from various localities.<sup>21</sup> The counties bordering on the canal route, having a total of scarcely 12,000 inhabitants at the time the canal was first opened,<sup>22</sup> contained at the close of a decade a population of 60,000 and grew within the next ten years to have 150,000 people.<sup>23</sup> While the broader belt including all the region served by the canal had by 1840 a population, according to an estimate from the official reports of the state, of 270,000 persons, averaging 12½ to the square mile.<sup>24</sup> In the three years which followed the completion of the first section from Ft. Wayne to Huntington<sup>25</sup> five new counties were organized along the route.<sup>26</sup>

The canal counties show the same relative increase, whereas counties well away from it, though showing the natural increase incident to new countries and to such facilities of trade as were offered, did not increase in nearly so high a ratio. Taking Noble and Huntington counties as typical cases, the difference in the rapidity of development is noteworthy. Huntington county was a canal county. Noble, on the other hand, was well outside of the canal district but offered far better natural advantages. For the years 1840 to 1850 the rate of increase in Noble county was 190 per cent. as opposed to 397 per cent. in Huntington county; and this is to be regarded as an extremely conservative case. Comparison can fairly be made with only such counties as were at the same stage in their development. The entire state was benefited more or less directly by the Wabash and Erie canal, and so general was the system of internal improvements in the Northwest that it is impossible to find a county with average natural

<sup>21</sup> George W. Ogden, Letters from the West, pp. 80, 81; Steele, Western Guide Book and Emigrant's Directory, pp. 1-26; Steele, A Summer Journey in the West, pp. 78-84.

<sup>22</sup> 1835.

<sup>23</sup> U. S. Census, 1830, 1840, 1850.

<sup>24</sup> H. S. Tanner, A Description of the Canals and Railroads of the United States.

<sup>25</sup> 1835-1838.

<sup>26</sup> Whitely, Adams, Wells, Wabash and Howard. Four others, Clinton, Miami, Huntington and Grant, had been organized since the act of 1828 had determined the location of the canal.

advantages entirely uninfluenced in its development by such works.

To a certain extent, the canal, making possible the increase of the population in the region it traversed, then supplied the increase. An examination of the immigration statistics shows beyond a doubt that certain influences stimulated immigration to the United States during certain years and inferentially these were, in part at least, the opportunities in America—opportunities enhanced in their value by the increased facilities of transportation. Of the latter the Erie canal is the most important single work, but its western connections were proportionately valuable and may be regarded as of importance in the ratio of a part to the whole. During the year 1821, 42 per cent. of the immigrants entering the United States passed in through New York. Seven years later when the Erie canal had begun to exert an influence on the course of migration the proportion for the various ports shows a marked change.<sup>27</sup> Boston, Baltimore, and Charleston had slightly fallen off. New Orleans, while yet having a small absolute number had increased threefold, Philadelphia had doubled its number and stood second, while New York had increased its numbers almost five times in seven years and received 68 per cent. of the total.<sup>28</sup> In the subsequent years, though the total immigration fluctuated much with varying causes checking or increasing emigration from Europe, yet the proportion entering New York continued to hold its own.<sup>29</sup>

<sup>27</sup> Annual Report of the U. S. Superintendent of Immigration, Washington, D. C., 1892, p. 34.

<sup>28</sup> This does not include the scattered immigration entering the lesser ports.

<sup>29</sup> The percentage passing into the various ports was as follows:

	1830	1835	1840	1845	1851.	
New York .....	58	73	69	67	74	per cent.
Boston .....	6	7	6	9	6	"
Philadelphia .....	8	4	5	5	5	"
Baltimore .....	17	8	8	6	2	"
New Orleans .....	10	8	12	13	13	"

On further examining the distribution of the immigrants entering New York, it is found that 30 per cent. passed into the group of states served by the Erie canal and its western connections.<sup>30</sup> The various routes aided in the distribution of this continual inflow. Foreign immigrants, unlike interstate movers, do not have their teams and wagons for overland travel but must take the means at hand. This is particularly true in the case of European immigrants coming as laborers without families.

There is further evidence that this movement of population took place. The census atlas of 1870 shows a foreign born population from 1 to 4 persons to the square mile. In parts, as around Ft. Wayne, the number increases to 8 and 10, and along the canal route eastward continues the same. Plate XXV further represents graphically that the course of settlement by foreigners was along this and other trade routes.<sup>31</sup> Back from this particular canal the density of the foreign born population is considerably less, being in fact less than one person to the square mile. Among the immigrants to the Wabash and Maumee valleys, the Irish and Germans predominated; the former came to a large extent as laborers on the canal during the period of construction.<sup>32</sup> From Ft. Wayne to Toledo from 8 to 15 per cent. of the total population were Germans. Around Lafayette from 4 to 8 per cent. of the population were Irish. Elsewhere along the route the proportion was less, being for both German and Irish from 1 to 4 per cent.<sup>33</sup>

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<sup>30</sup> This estimate is from the records for 1855. It is certain that earlier statistics would be more favorable for the purpose of this study, for then the field of distribution was smaller. Ohio, Indiana and Michigan were the main states receiving immigrants in the years from 1820-1840, whereas now the field has broadened to include Ohio, Indiana, Michigan, Illinois, Wisconsin, Minnesota and Iowa. The following year the proportion was 28 per cent. See Annual Report of the Commissioners of Immigration, New York, 1870, p. 146.

<sup>31</sup> Census Atlas, 1870, Plate XXV.

<sup>32</sup> Report of Chief Engineer, Doc. Journal, Indiana, 1835, No. 18.

<sup>33</sup> Census Atlas, 1870, plates.

In perfect accord with the conclusions above are the assertions of numerous early settlers whose presence and business connections with the canal make them competent witnesses. One writes, "Nearly all immigration from the East came in by the canal. It was the thoroughfare to the West." Another, "All the immigrants from the East came in by the canal; the boats would take grain to Toledo and bring immigrants and their goods by the hundred."

The canal's influence in inducing an interstate migration was greater than it was as a carrier of foreigners. The larger part of the population of the region are American born. Many came from the southern part of the state attracted by the opening of the northern part. In addition, the north-eastern states and Pennsylvania, southern Ohio, Kentucky, Tennessee, Virginia, Maryland, and the Carolinas, all contributed in large numbers to the population.<sup>34</sup>

The canal made possible the increase of the population by enabling the settlers to find markets for their surplus products. Where one family could formerly eke out a bare and irregular subsistence by the self-sufficing methods of frontier economic conditions, under the regime of easy communication with markets and the consequent multiplication of activities and the subdivision of labor several families now found space for a far better livelihood. Without the canal the development of the interior portions of the Northwest must have waited the era of railroads.

Obviously by this rapid increase of a rural population agricultural conditions were vitally affected. It has been asserted that there was no agriculture in the country before the construction of the canal. All evidence shows that it was, at least, conducted on a small scale. Where formerly production was limited to supplying home consumption it now began to send its products to eastern

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<sup>34</sup> Cox, Recollections of Early Settlements of Wabash Valley.

states. Larger farms took the place of the small clearings. Lands that before were not considered worth cultivation were now cleared, drained, and brought into use. The increased area included in a single farm and the ready sale at the enhanced prices of its products led to the introduction of improved machinery.<sup>35</sup>

Whereas before it was necessary for the farmer to produce a greater variety of products in order to supply by domestic manufacture his family's wants, it now became possible for him to limit his attention to a less number of products and to make these such as his climatic conditions and soil made most profitable. The Indiana farmer now began to regard wheat and corn as his staple products. In 1844 there was shipped out of Toledo, coming from the Maumee and Wabash valleys, 5262 bushels of corn. Two years later this out-put increased a hundred-fold and in 5 years more it amounted to 2,775,149 bushels.<sup>36</sup>

Various industries aside from agriculture were promoted to a marked degree. Industrial activities at the beginning of this period sufficed for scarcely more than to supply the settler's own necessities in food and clothing. One of the first plans of the projectors of the canal was to furnish industries with the surplus water power at various points along the route. And immediately after its construction took steps to rent this water power. The result was to enable numerous private individuals to build mills dependent on the canal for power. Some idea of the variety and extent of this impetus to pioneer manufacturing may be obtained from a statement made by the trustees concerning this phase of the canal's service:

"This year water power was used by nine flouring mills, eight saw mills, three paper mills, eight carding and fulling mills, two oil mills, one iron blowery and forge.....

<sup>35</sup> Based on statements by those participating in this development.

<sup>36</sup> That is, 555,250 bushels of corn in 1846 and 2,775,149 bushels in 1851. See James L. Barton, *A Brief Sketch of the Commerce of the Lakes*, p. 80; Andrews, *Report on Colonial and Lake Trade*, pp. 56 ff.

the improvement of which will tend to develop the resources and advance the wealth of this portion of the State. It is in this light, chiefly, that the leasing of water power on any portion of the canal is sanctioned. As a source of direct revenue, it is of but little consequence."<sup>37</sup>

Everywhere the canal, while not always furnishing the sole source of water power, made trade conditions such as to support varied industries. The flouring mills at Logansport, Delphi, Wabash, Lafayette, Huntington, and Ft. Wayne are especially noteworthy in this connection. At Delphi two paper mills were run by water power. Pittsburgh<sup>38</sup> contained grain elevators, foundries, and woolen mills. Every town had its warehouses for grain and pork.<sup>39</sup>

Large warehouses, long since abandoned are not an uncommon sight along the old canal bed to this day. Buildings, once standing on the bank of the canal where now no trace of such a work is to be found, still proclaim by half obliterated signs that here were received imports of teas, coffees and spices, cloth of domestic and foreign manufacture.<sup>40</sup>

By the very cheapness of canal transportation certain industries dependent on bulky raw materials were developed. The canal ran through a heavily forested tract and at once became the highway for handling fire-wood. Similarly the manufacture and shipping of lumber was begun and maintained for a long time on an enormous scale, while the quarrying of stone and the manufacture of lime became prominent sources of wealth.<sup>41</sup>

Along the north line of the canal a strip of country from fifty to one hundred miles in breadth was tributary to this trade route. On the south the belt extended forty to sixty miles. "Thirty-eight counties in Indiana and nearly

<sup>37</sup> Annual Report of Trustees, 1851, p. 144.

<sup>38</sup> Not even a way station on Wabash railroad to-day.

<sup>39</sup> Stated on authority of residents of the various localities who were eye-witnesses. Cp. *Lafayette Morning Journal*, Sept. 10, 1899.

<sup>40</sup> Notably in Fort Wayne.

<sup>41</sup> Stated on the authority of numerous early settlers.

nine counties in Illinois including an average area of 22,000 square miles" were directly affected by the canal.<sup>42</sup> The farm produce of southern Michigan found its way to the canal at Ft. Wayne over a plank road sixty miles in length.<sup>43</sup> All northwestern Ohio benefited from the canal.

At the various centers along the route were erected large store-houses for the reception of the agricultural products which were brought to the markets. Grain was bought and handled through the channels, shipped as fast as it accumulated until winter froze the canal over; then the merchants bought and stored in the ware-houses the accumulating purchases of wheat, corn, oats, and pork which were packed during the winter, all to be shipped from the filled up store-houses as soon as navigation opened in the spring. This kept the canal boats busy until well up to the new harvest. From remote counties grain was hauled by wagons to the canal. The farmers of Grant, Madison, and Delaware counties found an outlet for their wheat at Wabash after a long wagon haul. Similarly, the entire northeastern part of the state and even the lower counties in Michigan hauled to Ft. Wayne.<sup>44</sup> Old settlers tell of long trains of wagons waiting by the hour at these rising commercial centers for their turns to unload the products of their farms, bound to the eastern markets. Four hundred wagons unloading in Lafayette during a single day of 1844 were counted by one of the pioneers. Another, speaking of the business at Wabash, says it was a common occurrence to see as many as four or five hundred teams in that place in a single day unloading grain to the canal.

Many towns that suddenly sprang into existence as promising centers have passed with the canal. Lagro, Lewisburg, Georgetown, Carrollton, Americus, Lockport,

<sup>42</sup> Letter of Jesse L. Williams to Governor Shannon, of Ohio, Jan. 30, 1840; H. S. Tanner, *Canals and Railroads of the United States*, p. 199.

<sup>43</sup> This plank road ran from Fort Wayne to Sturgis, Mich. Cp. F. Fenwick Coleridge in *Indianapolis Press*, April 8, 1901.

<sup>44</sup> Stated on the authority of early settlers.

and Pittsburg, once towns of great promise with their prosperous warehouses, are almost forgotten relics of its former influence. Save Lagro, all went down with the ruin of the canal. Other cities, more fortunate, grew up with it and with the coming of the railroads have continued to control the traffic of their respective localities. Ft. Wayne, Huntington, Wabash, Peru, Logansport, Delphi, Lafayette, Covington, and Attica are conspicuous. These, owing their first impetus to the canal, are no less certain monuments of its economic place than are those that exist to-day only in ruins.

A brief statistical analysis of the business of the canal may serve to illustrate further this economic influence. During the years from 1841 to 1846 which represent the period when the canal was beginning to operate a through traffic, the Lake Erie commerce nearly doubled in volume,<sup>45</sup> and the rapid development in Indiana and Ohio along the canal contributed its quota to this increase. The business of the canal entering Toledo in 1850 is put down by a traveler over this route as 184,400 tons with an increase to 250,000 tons the following year.<sup>46</sup> Agricultural products made a large part of the east bound freight. The canal carried into Toledo during 1851, 1,639,744 bushels of wheat, 242,677 barrels of flour, and 2,775,149 bushels of corn,<sup>47</sup> while it carried back as one item 88,191 barrels of salt.<sup>48</sup> The freight traffic continued to increase until it reached its maximum in 1856 of 308,667 tons, from which time it gradually declined during a period of nearly 20 years.<sup>49</sup>

<sup>45</sup> Andrews, Report on Colonial and Lake Trade, 1854, p. 4.

<sup>46</sup> John Reynolds, Sketches of the Country on the Northern Route, 1854, p. III.

<sup>47</sup> Andrews, Report on Colonial and Lake Trade, pp. 56 ff.

<sup>48</sup> For 1853, see Report of Trustees, 1853, p. 328.

<sup>49</sup> Brief summary of canal traffic for years immediately succeeding 1854 follows:

1855 .....	252,152	tons.
1856 .....	308,667	"
1857 .....	149,473	"
1858 .....	200,472	"
1859 .....	137,819	"

At the same time the shipping on the Erie canal from Canada and the western states increased enormously, showing the unmistakable influence of the western canals. In 1840 the Erie canal carried 157,801 tons of western products out of Buffalo. Eighty-five per cent. of this was from agricultural products and 13 per cent. from the forests. By 1846 this total amount had increased more than threefold, being 506,830 tons. Six years later when the western canal commerce was at its highest, the total western traffic of the Erie canal was 1,151,958 tons.<sup>50</sup> Sixty-eight per cent. of this or 778,818 tons were agricultural products while 29 per cent. or 336,893 tons came from the forests.<sup>51</sup>

Again, by tracing the interior east-bound commerce of the Erie canal farther inland, it becomes easy to make complete the chain of transportation that prevailed in this period. Toledo sent to Buffalo annually 19 per cent. of the flour, 22 per cent. of the wheat and 32 per cent. of the corn which that port received from all western ports.<sup>52</sup> Toledo, in turn, received the greater part of its agricultural trade from the Wabash and Erie canal and from the lower part of the Maumee canal which together formed one system. The region which it traversed was regarded at that time as the best grain belt of the Northwest.<sup>53</sup> The re-

<sup>50</sup> During 1852, the western trade of the Erie canal was 70 per cent of its total tonnage to tidewater.

<sup>51</sup> The change in the proportion of these products in 12 years is significant of the fact that the railroads were beginning to divert from the canal the more valuable products of the farm, leaving bulky forest products for the canal. See Statistics of Erie Canal, pp. 412-413, U. S. Ex. Doc., 2d Sess., 48th Cong., Vol. 20; Poor's Railroad Manual, 1875-6, p. 810.

<sup>52</sup> Table showing the chief ports contributing to the trade of the Erie canal, with amount in some leading products for each, during 1851:

	Flour in bbls.	Wheat in bus.	Corn in bus.
Cleveland .....	360,059	673,403	458,502
Toledo .....	218,219	802,564	1,828,502
Detroit .....	270,551	512,758	223,204
Chicago .....	53,151	315,598	2,351,888

<sup>53</sup> Andrews, Report on Colonial and Lake Trade, p. 319.

lation of the Erie canal as an outlet for Toledo commerce is apparent from the statement that of a total export trade from Toledo of 242,677 barrels of flour, 218,219 barrels were shipped to New York by the Erie canal; of 1,639,744 bushels of wheat 802,564 bushels went by the same route; and of 2,775,149 bushels of corn 1,828,502 bushels followed the waterway across New York.<sup>54</sup> Thus a direct channel for the products of the Wabash and Maumee valleys was established.<sup>55</sup> While the canals were immensely stimulating the business of the state and encouraging immigration, this very enlargement of the volume of traffic, in turn, called for a more general and rapid system of transportation. As a direct result there grew up a railroad system which ruined the canals.<sup>56</sup>

The Wabash and Erie canal had another competitor. It has been estimated that from 1200 to 1500 flatboats descended the Wabash and White rivers bound for New Orleans in one year before the canal was constructed.<sup>57</sup> The flatboats gave way in time to the river steamboats able to carry loads on both up and down trips.<sup>58</sup> The early policy of the state had been to make this river trade a part of a great trade route from New York to New Orleans,<sup>59</sup> but the extension of the canal to Evansville elim-

<sup>54</sup> This for 1851; see Andrews, Report of Colonial and Lake Trade, p. 56.

<sup>55</sup> The rapid development of the Wabash and Maumee valleys is illustrated by the course of Toledo trade:

	Wheat in bus.	Flour in bbls.	Corn in bus.
1840 .....	85,000	51,000	.....
1841 .....	127,898	45,781	.....
1842 .....	116,730	37,280	.....
1846 .....	810,963	164,689	1,159,315
1851 .....	1,639,744	242,677	2,775,149

<sup>56</sup> Annual Report of Trustees, 1867-8, p. 10.

<sup>57</sup> Niles' Register, May 14, 1831, Vol. 40, p. 183; Lafayette Free Press, July 3, 1835.

<sup>58</sup> Henry Ellsworth, Valley of the Upper Wabash, p. 5.

<sup>59</sup> Senate Doc., 27th Cong., 2nd Sess., No. 112; Ex. Doc., 1st Sess., 27th Cong., Vol. 3, No. 155; Senate Doc., 23rd Cong., 1st Sess., No. 76; Session Laws, 1824, Act Jan. 31, 1824; *ibid.*, 1832, Ch. CLXXXVIII, p. 275; *ibid.*, Act of Feb. 1, 1835.

inated the Wabash river as a part of the route entirely. The canal from Terre Haute to Evansville, however, proved a failure, and its place was speedily taken by the Evansville and Terre Haute railroad. Above Terre Haute the river trade was gradually diverted to the canal and carried in the opposite direction. In 1836 the cheapest freight route from New York into southern Indiana was by New Orleans and the rivers.<sup>60</sup> The canal boards adjusted their tolls so as to meet the river rates. Large reductions were made and proportionate through-rates were negotiated with the Ohio and Erie canals. These efforts were successful, and by 1847 the total receipts at Albany had surpassed those received at New Orleans, and gradually this difference increased.<sup>61</sup> This means that the interior states were seeking their outlet to New York instead of New Orleans, and is significant as one step in turning the business interests of Illinois, Indiana, and Ohio toward the North and East. That is, with the turning of commerce from the Wabash river, the last cord binding Indiana economically to the southwest was severed. Like changes were going on in other states of the Northwest; the canals of Ohio and Illinois reversed the direction of their trade. A careful observer and competent authority on routes of transportation stated in 1852 that there was at that time no competition with the routes by the lakes and New York. Most of the business of the central and northern portions of Indiana went northeastward to the lakes, and the effect was to seriously impair the Philadelphia and Baltimore trade.<sup>62</sup> The state looked to Toledo, Buffalo, and New York rather than

<sup>60</sup> It was found that pork could be shipped from Lafayette, Indiana, to New York via the rivers and ocean for \$10.00 per ton, whereas the canal rates were \$12.00. Similarly, a Boston merchant shipped duplicate orders, one by the canals and the other by the ocean and rivers, and reported the cost of the latter at 50 per cent less. The Lafayette Daily Courier, Jan. 19, 1850; Report of Trustees, 1849, p. 260; ibid., 1850, p. 144; ibid., 1853, p. 6; Peck, J. M., Guide for Emigrants, Boston, 1836.

<sup>61</sup> Report of Trustees, 1849, p. 261; ibid., 1856, p. 286.

<sup>62</sup> Letters of Prof. Ed. D. Mansfield, pamphlet, Phil., 1853.

Cincinnati, Pittsburg, Baltimore, and Philadelphia as in the earlier years of the state's history.<sup>63</sup> "The course of trade for productions of that sort is tending more and more to the northeast" wrote another authority.<sup>64</sup> New York owes its predominance as a trade center to this movement which was going on within the Northwest.

A similar revolution took place within the individual states of this group, making them face to the north rather than the south in industrial structure as well as in business interests. In 1830 five-sixths of the population of Indiana was in the southern portion along the Ohio valley and on the lower Wabash. By 1840 the frontier had been pushed northward all along the line and particularly up the Wabash valley. Ten years later shows a more equal distribution of population over the state, so that the density in the region fed by the canal is about as much as the older south portions. The map of 1860 shows a population on the Wabash of 45-90 per square mile while along the Ohio it is but 18-45. This movement in the density of the population to the north is graphically shown in the census atlas of 1870.<sup>65</sup>

At the outset Virginia and Kentucky immigrants entered the state from the south, and settled along the southern valleys, regarding the northern portion of the state as a sort of "terminating point of habitancy."<sup>66</sup> But with

<sup>63</sup> Curiously enough Cincinnati continued to send merchandise into the Wabash valley by the quite indirect route of the Miami canal and from that into the Wabash canal at the junction. Estimating from the tolls paid to the canal in 1851, 69 per cent of the west-bound freight came from Toledo, 19 per cent from Cincinnati and 11 per cent from local trade; for 1852 these proportions are 77, 15, and 8 per cent, respectively; for 1853 they continue to show a decrease of the Cincinnati imports, being 83, 11, and 6 per cent. Reports of Engineer, 1851, p. 368; 1853, p. 830.

<sup>64</sup> Andrews, Report on Colonial and Lake Trade, p. 146; Cp. James L. Barton, *A Brief Sketch of the Commerce of the Lakes*, p. 80.

<sup>65</sup> Statistical Atlas U. S. Census, 1870, plates XVI and XVI (a).

<sup>66</sup> Timothy Flint, *History and Geography of Mississippi Valley*, Cincinnati, 1833; Geo. W. Ogden, *Letters from the West*, pp. 64-5, New Bedford, 1823; Steele's *Western Guide Book and Emigrants' Directory*, pp. 68-69. Cp. Census Atlas, 1890, plates 25-30.

the opening of the north of the state to settlement by Indian treaties and under the encouragement offered to agriculture by the facilities for exportation to the eastern markets, the population had increased so rapidly as to change the character of the state quite radically. With a population to a large extent from the northeast and with markets in that direction, the business and political interests became closely knit with those of the North and East.

Of more than usual political significance were several attempts to secure a southeastern outlet for the states north of the Ohio river. The Chesapeake and Ohio canal was the eastern section of such work. Never completed beyond Cumberland, Maryland, it failed materially to affect the states of the Northwest. Its early extension westward as planned, pushing across the mountains by a railroad and connecting with the Ohio river, as the Baltimore and Ohio railroad did later, might possibly have retained for Virginia the advantage with which it started.<sup>67</sup> Another plan of less promise was a Cincinnati-Charleston railroad. Citizens of both cities strongly supported the project, and the governors of three states gave it their formal approval.<sup>68</sup> It was advocated as the shortest and most direct route to the seaboard.<sup>69</sup> The James river canal was also regarded by its projectors as a possible competitor with the Erie canal for western trade, but like the Chesapeake and Ohio it lacked the connections at the western terminus which the Great Lakes gave to the Erie canal. Such projects have their political significance. Had they been successfully carried out, pouring settlers into the

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<sup>67</sup> North American Review, Vol. 24, p. 1; Ward, *Chesapeake and Ohio Canal Project*, Johns Hopkins University Studies, Seventeenth Series.

<sup>68</sup> Lafayette Free Press, Dec. 18, 1835; Message of Governor Noble, Indiana, Dec. 1835; Governor Swain, of South Carolina, Message, Dec., 1835.

<sup>69</sup> This movement culminated in 1869 as the Cincinnati Southern Railway, a municipal enterprise of Cincinnati. Dr. J. H. Hollander, *The Cincinnati Southern Railway*, Johns Hopkins University Studies, Twelfth Series.

Northwest from the southeastern states, men bound by business interests and political and social habits to the South, the course of history in Indiana and Illinois particularly must have been quite different.<sup>70</sup> To make clear the meaning of this statement it is necessary to recall the severe struggle between the pro-slavery and anti-slavery factions immediately preceding the admission of Indiana.<sup>71</sup> With a strong slavery party already on the ground, such an economic connection as was contemplated in the southeastern routes must have done much to revive the earlier issue, and if not to make slavery an issue for Indiana itself, to have made it, at least, a "border state."

This speculation would be barren were it not for the emphasis which it throws on the influence of the canal as a strong political and economic factor in commonwealth building. In this respect the place of the Wabash and Erie canal in western history was to induce immigration from the northern states and Europe into its territory and give it the sectional population characteristic of other parts of the Northwest.

The Ohio river and the National road were important routes for southern and central Indiana. Short lines of railroad like the Madison and Indianapolis and the Evansville and Terre Haute were also early built to supplement them. The Ohio river drew off most of the trade of southern Indiana outside of the Wabash valley, only to let it be diverted away, in large part, to the Ohio canals at Cincinnati and Portsmouth; though as the railroad became established across Pennsylvania there was a growing tendency to ship by the Ohio river as far as Pittsburg. The National road penetrated the state from near the middle of its eastern boundary and running through Indianapolis

<sup>70</sup> As another illustration of the manner in which a single line of transportation can shift the business of a section, compare the recent developments of the Chesapeake and Ohio railroad traffic to Newport News, Virginia.

<sup>71</sup> For a discussion of slavery in Indiana, see Dunn, "Indiana: A Redemption from Slavery."

crossed the state. Its greatest service was in facilitating the overland travel of immigrants, serving as a great mail route, and as a great highway for local purposes. The other routes furnished so much cheaper cost for long distance hauls that the road could not be regarded as a competitor.<sup>72</sup>

For a new country to find markets for its surplus products means to improve very greatly conditions of living. Such an event makes possible thrift, progress, and a degree of culture as opposed to indolence, stagnation, and rude frontier civilization. Every pound of lard that the canal carried away brought back increased comforts and luxuries from the east for the settlers. Viewed in this light, a line of transportation becomes a civilizing agent of inestimable value to a community.

In common with all lines of transportation, the Wabash and Erie canal contributed its part toward the equalization of prices. At Vincennes and Cincinnati during the earliest years of western occupation, 1816 to 1820, wheat sold for 37 cents and corn for 10 cents per bushel, while imported articles were proportionately dear, coffee being rated at 37½ to 50 cents per pound, sugar 25 to 37½ cents per pound, iron at 16 cents, and salt at \$10.00 per barrel.<sup>73</sup> And as late as 1840 the farmers of Delphi, Indiana were hauling their wheat to Michigan City and selling it for 45 cents a bushel and paying 9 dollars for a barrel of salt, but in less than two years, when the canal had reached that place, the same farmers obtained 1 dollar a bushel for their wheat and bought salt for less than 4 dollars a barrel.<sup>74</sup> Illustrations might readily be multiplied.

<sup>72</sup> Letters of Prof. E. D. Mansfield, pp. 9-10; *A Summer Journey in the West*, pp. 78-84; *The Central Water Line*, Richmond, 1868; Timothy Pitkin, *A Statistical View of the Commerce of the United States*, p. 534.

<sup>73</sup> David Thomas, *Travel through the Western Country*, Auburn, N. Y., 1819; *The Central Water Line*, Richmond, Va., 1868.

<sup>74</sup> Stated on the authority of old settlers who lived near Delphi at the time.

A canal to-day could scarcely be regarded as a socializing force, yet this is one of the services legitimately attributed to that institution. The boats used on the canal were owned entirely by private parties, paying toll for the privilege of using it. Such companies operated daily lines of packet and passenger boats. These packets, judged by our standards, were small and without any equipment for the comfort of the passengers.<sup>75</sup> Yet, in those days they talked of the superior accommodations upon their splendid lines of boats. "The boats are new, fitted up with great neatness and taste, fare low and commanded by the cleverest fellows in the world. What more could a fastidious public require? It is well worth while to make a trip to Cincinnati or Toledo just to enjoy the luxury of a passage in these boats." So ran the contemporary accounts of canal travel.<sup>76</sup> Travelers usually provided themselves with books and tobacco.<sup>77</sup> At stopping points they got off and walked on until overtaken. The packet boats ran at the rate of eight miles an hour. In 1844 the trip from Toledo to Lafayette, about 242 miles, was scheduled for 56 hours.<sup>78</sup> Such leisurely traveling was so much swifter and more comfortable than the slow going wagons over the rough roads, which was most often the alternative offered to the traveler, that he became jubilant in his descriptions of the canal packet.<sup>79</sup> The arrival of a passenger boat in a town was an occasion of great excitement. Everybody who could went to meet the boat. Its passengers were the news bearers. The villagers eagerly inquired the news or chatted sociably with them.<sup>80</sup>

<sup>75</sup> J. R. Beste, *The Wabash*, Vol. II, pp. 191-221; Knapp, *History of the Maumee Valley*, pp. 345-6.

<sup>76</sup> Fort Wayne Times and People's Press, Aug. 30, 1845.

<sup>77</sup> J. R. Beste, *The Wabash*, Vol. II, pp. 191-221. This is a graphic and entertaining account of a journey of an English gentleman's family from Terre Haute to Toledo, and forms one of the best contemporary descriptions of packet boats and canal travel.

<sup>78</sup> Fort Wayne Times and Press, Oct. 21, 1847.

<sup>79</sup> Knapp, *History of the Maumee Valley*, p. 345; *Valley of the Upper Maumee*, Vol. II, p. 18.

<sup>80</sup> A comparison between canal passenger fares and modern railroad rates shows a close similarity. The advertised fare from

Equally has the Wabash trade route promoted the economic development of the Northwest, affected the political life of the people, improved their social conditions, socializing the communities through which it ran, and assisted in the nationalization of the regions it penetrated. The cosmopolitan character of the population, brought in because of the opportunities made possible by the canal, destroyed the natural tendency to provincialism and enabled the inhabitants to realize the ties which bound them to the other commonwealths of the union; that interstate canals, railroads and natural waterways played no small part in creating the American nation instead of an American league is now almost a truism.

For a period from 1843 to 1856, the canal was recognized as a part of the great national military highway between New York and New Orleans.<sup>81</sup> Its completion was the realization of a greatly cherished military plan to connect by water the Gulf of Mexico and the Gulf of St. Lawrence and by the Erie canal to join the former to the Atlantic ocean.<sup>82</sup> In its slightly narrower sphere, though no less important when the smaller scale of all affairs in the earlier period be considered, this waterway must take a place as exerting an influence not dissimilar to that of the Pacific railroad. Both alike promoted the development of a large territory and both strengthened the national spirit.

In conclusion it may be said that the influence of the Wabash trade route does not end with the fall of the canal. The Wabash railroad is its economic successor and continues to exert a similar influence. More recently steps have been taken to construct an electric railroad along the old tow-path, and at present writing there is a good

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Fort Wayne to Toledo, about 104 miles, was \$3.25; from Fort Wayne to Lafayette, 138 miles, the fare was \$3.75; from Fort Wayne to Cincinnati, 221 miles, it was \$6.75. See Fort Wayne Times and People's Press, Oct. 21, 1847.

<sup>81</sup> Ex. Doc., 1 Sess., 28 Cong., Vol. IV, No. 134.

<sup>82</sup> Henry Ellsworth, Valley of the Upper Wabash.

prospect for the early completion of such a road from Toledo to Lafayette. A small portion is already in operation. The great Wabash system and the demand for further facilities as represented by this electric road are an additional justification for the construction of the Wabash and Erie canal, if such a justification were necessary.

INTERNAL IMPROVEMENTS IN NORTH  
CAROLINA PREVIOUS TO  
1860



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INTERNAL IMPROVEMENTS IN  
NORTH CAROLINA  
PREVIOUS TO 1860

BY  
CHARLES CLINTON WEAVER, PH. D.

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## PREFACE

The aim of this study has been to present the movement for internal improvements as it affected the State as a whole, and to discuss the most important enterprises that were undertaken during a limited period. In its preparation I have used State laws, reports of the various State officers and the State newspapers of the time. There are also some contemporary narratives, such as Judge Murphy's "Memorial," which have been of assistance. But, for the greater part, I have had to depend upon the documents found in the State Library at Raleigh. In addition to this, President Peacock kindly gave me access to the very fine collection of North Carolina literature at Greensboro Female College.

The work stops at the outbreak of the Civil War, for there are several reasons why this is an appropriate point to close the subject. In the first place there was at that time a complete suspension of public works in the State. After the war those which were undertaken were of a different kind and were carried on by totally different methods. Then too, during reconstruction, the question was one which was intimately connected with politics, and was more than a mere question of internal development.

I owe to Dr. J. S. Bassett, of Trinity College, North Carolina, the suggestion of the subject of the study. I owe also my very sincere thanks to Dr. J. C. Ballagh, of the Johns Hopkins University, under whose direction the work has been carried on, and whose advice has been of the greatest assistance.

C. C. W.

June, 1900.



## CONTENTS

	PART I	PAGE
CHAPTER I. BEGINNINGS .....		9
CHAPTER II. GENERAL MOVEMENT.—CONVENTIONS.....		16
CHAPTER III. POLITICAL ASPECTS .....		23
CHAPTER IV. EVILS TO BE REMEDIED.....		30
CHAPTER V. CALDWELL AND GALLATIN.....		35
CHAPTER VI. REASONS FOR FAILURE.....		45

  

	PART II	
CHAPTER I. RIVERS:		
Cape Fear Navigation Company.....		49
Roanoke Navigation Company.....		57
Tar River Company.....		62
Neuse River Company.....		64
Other Rivers .....		65
CHAPTER II. CANALS:		
Dismal Swamp Canal.....		69
Other Canals .....		73
CHAPTER III. RAILROADS .....		76
CONCLUSION .....		95



# INTERNAL IMPROVEMENTS IN NORTH CAROLINA PREVIOUS TO 1860

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## PART I

### CHAPTER I

#### BEGINNINGS

Internal improvement as a comprehensive project of State activity first came forward in the General Assembly of 1815. Heretofore such matters had been left to private companies, although the State had given aid. These efforts had been, so to speak, local in nature. Now a system was to be inaugurated and the State was to take a hand in the matter as one that concerned public welfare. In this North Carolina was but one of a number of States which had turned their attention to internal development. In New York Clinton had conceived the great Erie canal. Pennsylvania had long before set the example, and more recently and nearer home Virginia had established a fund for a similar purpose.

The Legislature of 1815 appointed a committee on the subject which reported a plan substantially as follows: Companies should be incorporated for improving the navigation of the principal rivers, companies to hold their rights forever; 2, the rights and privileges of the company should extend from the source of the river to its mouth or to the State line and to all tributary streams; 3, each company should be entitled to levy such tolls as would yield fifteen per cent on capital invested; 4, the State should subscribe one-third of the capital stock of each company; 5, a Board of Commissioners was to be appointed to super-

intend public works, two engineers were to be employed, surveys were to be made and reports were to be returned annually to the General Assembly. The board was, furthermore, to expend the money appropriated, to recommend new works, and to collect information concerning agriculture, commerce, soil, climate of the State, etc. The bill passed the Senate but was killed in the House of Commons.<sup>1</sup>

Public works, however, were not abandoned. The Roanoke Navigation Company was soon incorporated with \$25,000 subscribed to its stock, and the Cape Fear Navigation Company, chartered years before, was aided by a \$15,000 subscription. Four men<sup>2</sup> were appointed to have surveys made of Roanoke, Tar, Neuse, Cape Fear, Yadkin and Catawba rivers and to see if communication between the Cape Fear and Yadkin might be opened. During the summer of 1816 a Captain Clarke surveyed the Albemarle and Croatan sounds and Roanoke inlet, and in the fall of the same year Colonel Benjamin F. Baldwin of Massachusetts was employed as engineer and surveyed the Tar and Neuse rivers. In 1816, also, the Committee on Inland Navigation submitted a report which related to the improvement of inlets, to the opening of the principal rivers, to the junction of two or more of those rivers by means of canals, to the concentration of commerce at a few points by means of the foregoing improvements.

Captain Baldwin having left, the year 1817 was spent in fruitless efforts to get a permanent surveyor. The following year surveys were directed to the Yadkin, the Cape Fear, the country between the Cape Fear and the Yadkin, the country between the Roanoke and the Pungo, that between the Roanoke and the Tar, that between the Tar and the Neuse. The reports of these surveys were submitted to the General Assembly in 1818 and 3000 copies were ordered printed.

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<sup>1</sup> See Murphy's Memorial on Internal Improvements.

<sup>2</sup> John Hayward, Peter Brown, William Boylan and Joseph Gales.

In 1819, on account of the difficulty of securing surveyors in the United States, an effort was made to secure one in England. Finally, Mr. Hamilton Fulton was employed at a salary of £1200 sterling. He came highly recommended and arrived in July of that year and at once visited the various rivers that were to be improved. A plan of works was furnished him as a guide on which he was to base his report. The suggestions relate to the various enterprises that had been contemplated by the State and he was expected to report on the feasibility of each. The plan embraced, 1, inlets on the coast; 2, sounds on the coast; 3, primary rivers; 4, junction of two or more of these rivers by navigable canals; 5, public highways, and, 6, the draining of marshes and swamps of eastern and southern counties.

This plan, it will be noted, is an extension of the first plan contemplated by the State and follows the original very closely. It will be seen at a glance that it was also an effort to suit the needs of all sections. The West needed—and badly, too, if travelers are to be<sup>3</sup> believed—good roads; the East was interested in the speedy opening of rivers, while in the South disease was abundant on account of the marshy and waste land. On account of the swamps vast tracts of valuable land were lying neglected and, instead of being cultivators of the soil, the people made tar and turpentine.<sup>4</sup> Finally, all parts of the State were interested in the opening of the inlets and sounds of the coast in order to build up a home market and to facilitate commerce, which was necessarily limited to vessels of very small carrying capacity and even then was exceedingly dangerous.

Such were the plans that the pioneers of North Carolina projected for the development of the State. The project was immense, considering the day when it was undertaken, and it was drawn up with wonderful foresight. In truth,

<sup>3</sup> Olmstead: *Seaboard Slave States*.

<sup>4</sup> Williamson: *History of North Carolina*, vol. ii, ch. xiii.

however, it was too comprehensive and was too diffuse. It failed to recognize the fact that to undertake and carry out the improvement of one river or the making of one good road at a time would have been more beneficial than scattered efforts made at so many places. The plan, however, met with approval outside of the State, as may be seen from the following extract written in 1821: "Our readers will easily perceive, by this short sketch, with what wisdom the whole scheme has been formed. The State has taken the precaution to have accurate surveys made of every part so that no expense may hereafter be wasted in attempts, which must ultimately fail. In different parts of our country, we have seen such abortive attempts, which might have succeeded, or at least, the expense of trial have been saved, by skilful management at first. The commissioners have also acted on the profoundest principles of policy and economy, in securing the aid of an engineer, in whose skill, judgment, and other qualifications, unlimited confidence can be placed. This is laying a solid foundation. Everything will have unity of design. Each part will not only sustain itself but contribute its due share in strengthening the others."<sup>5</sup>

This plan<sup>6</sup> of operations will furnish an excellent starting point from which to carry on the investigation of the subject. It may be necessary at times to go back of this period, but to no great degree, for the greatest activity in the matter of internal improvements was from this time forward. The action of the State is mirrored in the reports of the Board of Internal Improvements, which was established in 1819.<sup>7</sup> The act which created this board provided, at the same time, for the creation of a fund which

<sup>5</sup> Article in N. A. Review, 1821, vol. 12, p. 26, on "Internal Improvements in North Carolina," based on Judge Murphy's Memorial.

<sup>6</sup> The Memorial of Judge Murphy is the classic on the subject. It is wonderful in the completeness of its detail and the breadth of the design.

<sup>7</sup> Laws of N. C., 1819, ch. 989: "An act to create a fund for internal improvement and to establish a board for the management thereof."

was "to be applied exclusively to internal improvements, unless necessity demanded it to be applied elsewhere."<sup>8</sup> Other sections of the act provided that the board was to be known as the "President and Directors of the Board for Internal Improvements;"<sup>9</sup> chosen annually by joint ballot of the Legislature<sup>10</sup> with the Governor as ex-officio president;<sup>11</sup> that the fund established was to "consist of net proceeds from the sales of lands recently acquired from Cherokee Indians;"<sup>12</sup> that the board was to appoint an engineer to superintend public works;<sup>13</sup> was to meet annually;<sup>14</sup> the fund to be deposited in the State treasury,<sup>15</sup> and that the "President and Directors of the Board were to have power to subscribe in behalf of the State to such public works as the General Assembly may from time to time agree to patronize,"<sup>16</sup> and "when an appropriation was made to any corporation the State should be considered a stockholder with as many shares as money advanced."<sup>17</sup>

Each year the board was to report to the Legislature the exact state of the fund.<sup>18</sup> The act<sup>19</sup> which ordered the sale of the Cherokee lands provided that no land should be laid off for sale except such as would sell for at least fifty cents per acre, and that there should be reserved a site for public buildings and 400 acres of land out around said site for future disposition of Legislature; all land not valued at the minimum price was to be likewise reserved. The land was to be laid off in sections of 350 acres and to be classed as first, second or third quality, and it was expected that land of the first quality would sell for \$4 per acre; second for \$3 and the third for \$2. In case they did not bring these prices, the commissioners might stop the sale. A discount of 8 per cent was allowed for cash. The minimum price was subsequently reduced so that land of first quality was to sell for \$3 and of second for \$2, and

<sup>8</sup> *Ibid.*, sec. 1.   <sup>9</sup> *Ibid.*, sec. 3.   <sup>10</sup> *Ibid.*, sec. 5.   <sup>11</sup> *Ibid.*, sec. 4.  
<sup>12</sup> *Ibid.*, sec. 2.   <sup>13</sup> *Ibid.*, sec. 7.   <sup>14</sup> *Ibid.*, sec. 8.   <sup>15</sup> *Ibid.*, sec. 10.  
<sup>16</sup> *Ibid.*, sec. 11.   <sup>17</sup> *Ibid.*, sec. 12.   <sup>18</sup> *Ibid.*, sec. 2.   <sup>19</sup> Laws of 1819.

third for \$1.50,<sup>20</sup> and lands that were for any reason likely to bring less were to be bidden in by the commissioners for the State. Still later third grade lands were reduced to \$1.<sup>21</sup> Still later the price was reduced to \$1.50, 75 cents and 25 cents for each of the grades respectively.<sup>22</sup> In 1836 new land having been acquired, the land was divided into classes according to quality, with prices ranging from \$4 down to 25 cents.<sup>23</sup>

In 1823 an act was passed "for the relief of such persons as became purchasers of the Cherokee lands,"<sup>24</sup> making the terms of payment somewhat easier, and this act was itself amended in the two following years.<sup>25</sup>

Thus, it will be seen, the fund, depending as it did on such sources, could not avoid fluctuation. In 1832 attention was called to the fact that since the banks of Newbern and Cape Fear had ceased to declare dividends the receipts from the bonds given by the purchasers of Cherokee lands was the only source of revenue for the fund.<sup>26</sup> Besides this, an act of the Legislature had directed the Treasurer "to abstain from collecting any money due upon Cherokee bonds, given for land lying within the county of Macon or within the county of Haywood,"<sup>27</sup> and in consequence the collections had been largely suspended. The next year<sup>28</sup> it was disclosed that the "fund had become so reduced as to have but little more than a nominal existence" and without prospect of much benefit from any of the resources in the control of the board. As before, the only source of income was the Cherokee lands which would at best "be inconsiderable; but owing to the unsettled state of the title to those lands, collections have of late been almost entirely suspended." In 1836<sup>29</sup> it was enacted that there should be appropriated

<sup>20</sup> Laws of 1821.

<sup>21</sup> Laws of 1822.

<sup>22</sup> Laws of 1833.

<sup>23</sup> Laws of 1836.

<sup>24</sup> Laws of 1823.

<sup>25</sup> Laws of 1824-25.

<sup>26</sup> In 1821 an act was passed which added to the Internal Improvement fund the dividends of the stock held by the State in the Banks of Newbern and Cape Fear. It was this stock which had now ceased to draw dividends.

<sup>27</sup> Laws of 1829.

<sup>28</sup> Treasurer's Report, 1832.

<sup>29</sup> Laws of 1836, ch. 22.

to the Internal Improvement Fund the surplus revenue received from the United States Government except \$300,000 which was to go to the redemption of the public debt, a like amount to be paid for stock in the Bank of Cape Fear and that part which was to be applied to Literary Fund, and \$100,000 to go to defray civil and contingent expenses of the State government. By 1852<sup>30</sup> it was reported that the duties of the board have become little more than the appointing of representatives and directors on behalf of the State in the various internal improvement companies and ordering payment for the works of public improvement. The fund had been transferred to the public treasury.

A tabulated statement of the receipts and expenditures of the Board of Internal Improvement will show the scale on which works were being attempted by the State, through this period of activity covering about twenty years.<sup>31</sup>

Year.	Expenditures.	Cash Receipts.	Balance.
1817-1821 <sup>32</sup>	\$220,816.25½	not given	not given
Nov. 17, 1828	12,997.54½	\$195,565.04½	\$6,559.00
1829	12,949.22½	21,389.70½	8,840.48
1830	9,949.60	13,973.48½	4,023.88½
1831 <sup>33</sup>	22.50	4,559.98	7,944.19½
1832	9,732.15	2,601.36	813.40½
1833	1,458.61	1,292.93	979.08½
1834	246.89	5,807.23	6,539.42½
1835	26.28	14,736.17	21,249.31
1836 <sup>34</sup>	26.35	16,194.93	37,417.89
1838	894,616.25	898,386.51	3,752.26
1840	318,252.82	312,327.83	2,172.73

<sup>30</sup> Report of Board of Internal Improvement, 1852.

<sup>31</sup> These statistics are taken from the Reports of State Treasurer, and will be found as appendices to the acts of Assembly for various years.

<sup>32</sup> There is no statement by years for this period. The figures given are taken from a report made in 1827.

<sup>33</sup> No board having been elected, this amount was the only appropriation and this was made by the Legislature, as money could not be drawn.

<sup>34</sup> After 1836 these figures represent two years instead of one.

## CHAPTER II

### GENERAL MOVEMENT

As indicated above, the general policy of the State was at first to render aid to corporations in public improvements. In this there were two methods open. One was to make an appropriation outright to a company for a certain purpose and the second was to offer to take a certain percent of the stock. The amount to be subscribed by the State may be said generally to have been two-fifths, the remainder being provided by private subscriptions. Of these companies there was no dearth. It was not long before the idea grew from an "amiable enthusiasm" into an "excitement that seems to pervade every section of the State on the subject of internal improvement."<sup>1</sup> The impulse for schemes of this kind was urged on by the rapid growth of other States, the fear that North Carolina would not keep pace, and the alarm with which the citizens saw their products go to other States without building up a market of their own.

Conventions were held in various parts of the State. One of these, held in 1833, of which D. L. Swain was president, adopted resolutions to the following effect: A committee of twenty was to be appointed to publish an address to the people of the State on the subject of internal improvements. Committees of twenty were to be appointed in each county for the purpose of corresponding together, distributing the address and otherwise promoting the object of the convention. Each county was to elect three delegates to a convention to meet in Raleigh on the fourth Monday in November of the same year.

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<sup>1</sup> Governor's Message, November 18, 1833.

In pursuance of this call the convention, in which forty-eight counties were represented, assembled in Raleigh. A practical illustration of the need of public works was shown by the "Committee on Internal Improvements for North Carolina."<sup>2</sup> Some of the facts are instructive.

Salt in the Eastern market cost from 40 to 50 cents per bushel. The expense of transportation brought the price to \$1.50 per bushel by the time it reached the farmers of Iredell county. This cost for transportation could be reduced, it was said, from \$1.00 to 25 cents per bushel. Iredell county alone consumed 500 bushels per year, and thus in one county there would be a saving to them of \$3750 per year.

The convention faced an important problem, and one of the most perplexing in the State's history. How were all sections to be equally and fairly treated in regard to internal improvements? This was the burning question and this could only be solved by compromise, and compromise meant that the result would not be satisfactory.

According to the ideas of the members of the convention the State should be divided into five distinct sections with divergent interests; (1) northern counties; (2) Tar river and Neuse river counties; (3) counties trading with Cape Fear; (4) extreme west; (5) middle counties on the Roanoke.<sup>3</sup>

An extended plan for improvement was set forth which aimed at avoiding sectional jealousies. For the carrying out of the project it was estimated that \$5,000,000 would be sufficient. This could be borrowed, perhaps with interest at 4 per cent, or not over 5 per cent. The payment of the principal could be long postponed and by borrowing \$100,000 at a time interest would not be so heavy. The first million expended in public works would soon bring

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<sup>2</sup> Duncan Cameron was chairman of this committee. Forty-four counties voted for the report and four against it.

<sup>3</sup> These schemes will be considered in detail in their proper connection.

in an income that would aid in paying the interest on the second, and so on. Another result would be that this loan would bring in a circulating medium, a thing that was much needed.

The action of this convention of 1833 was endorsed by the legislative committee of the following year. In accordance with the plans of the convention, meetings were held in various parts of the State for the purpose of considering the question. The legislative committee of 1834 recommended that the State offer aid to the companies engaged in work of this kind on the basis which the convention had suggested. Still another State convention was held in Raleigh in 1838.<sup>4</sup> This meeting presented a memorial to the General Assembly. The convention itself was composed of nearly 200 delegates and represented nearly 40 counties. It gave the question of internal improvements a "week of earnest consideration" and made certain requests of the General Assembly. The memorial which it presented was referred to the Senate Committee on Internal Improvements and the report which they made concurred in substance in the opinions expressed by the convention. They also recommended that the State borrow \$3,000,000 for carrying out the plans set forth by the convention, and made provision for aiding several projects for improvement, making specific appropriations to some and to others offering to subscribe as much as four-fifths of the capital stock.<sup>5</sup> Not only were conventions held but

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<sup>4</sup> Other conventions were held in different places, some discussing the general question of public works and others devoting their attention to some one scheme. Among them may be noted a meeting at Salisbury in October, 1833, and one in Greensboro in 1838, which issued the call for the Raleigh convention. The Greensboro meeting was presided over by Governor Dudley. The convention declared that they were "deeply impressed with the conviction that the best interests of North Carolina require her Legislature to take energetic and liberal measures in promotion of extensive and judicious schemes for the development of her vast resources." See Greensboro Patriot, July 13, 1838.

<sup>5</sup> Report of Senate Committee on Internal Improvements, 1838.

societies were organized in various localities for promoting the interests of internal improvements. For example, one was started "by the citizens of Pasquotank for the purpose of promoting internal and agricultural improvement and to act as an auxiliary to a similar society in Raleigh."<sup>6</sup>

The officials of the time were fully alive to the demands which the people made for an opportunity to develop the State. In 1833 the Governor in his message to the Legislature says that a more liberal system has become imperatively necessary.<sup>7</sup> The questions which came up for discussion in the course of the message are pertinent and practical. Was the condition of the country susceptible to improvements—especially the improvement recommended? Should a fund be established in proportion to the work? Should the public treasure be exclusively employed or should the State offer aid to incorporated bodies? These were just the matters which the Board of Internal Improvement had had under consideration, but the Governor adds that it is his opinion that great channels of intercommunication demand the exclusive attention and patronage of the National Government. In regard to local improvement the State should organize and incorporate companies and subscribe for a uniform portion of stock in each.

This "amiable enthusiasm" which pervaded the State was not at all times equally vigorous. Things did not go as smoothly as was predicted. Many events combined to cause discouragement. There were two or three general causes of failure that we find distinctly apparent and their presence is easily established from contemporary documents. One of the most prominent of these was the failure to accomplish all that was anticipated. As early as 1825 prejudice manifested itself on account of the failure

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<sup>6</sup> Greensboro Patriot, July 4, 1829. The paper adds, "We wish them success; and we wish furthermore that their example may be imitated."

<sup>7</sup> Governor's Message, November 18, 1833.

of several of the navigation companies.<sup>8</sup> In one of its reports<sup>9</sup> the Board of Internal Improvements says that when the State first went into the matter it had had no experience for guidance and was stirred up by the success of other States. The result was wild speculation which could lead only to disappointment. The Legislature was not willing to see all the work come to naught and so left the Board of Internal Improvements but made no provision for the undertaking of new work. Not only so, but for all the vast plans laid out only \$40,000 annually was contemplated for expenditure. Politicians devised the plans and undertook the execution "with a fund not larger than some of our citizens employ on their estates. . . . This system was persevered in until \$50,000 was lost to the treasury. The public was discouraged and improvement was abandoned." The mistake was undoubtedly made in attempting to do too much at one time, and that too, with a fund that would scarcely have successfully done the least difficult. This policy was the result of "narrow views, local prejudices and sectional jealousies."

In 1834 it was declared that "no general system of general improvements can be carried on by incorporated companies."<sup>10</sup> The causes of failure of so many companies were said to be found not in the difficulty of the work and inexperience alone, but in other reasons. 1, There was no surplus capital in the State seeking investment. For the most part stock in the companies had been subscribed by agriculturists to whom profits were a secondary matter and an outlet for products was of primary importance. These people were not able to devote the necessary attention to the various enterprises. 2, there was no great body of laborers seeking employment; negroes were slaves; farmers and mechanics were otherwise em-

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<sup>8</sup> Report of Board of Internal Improvement, 1825.

<sup>9</sup> Ibid., 1833. This report is a full explanation of all the plans for public works and an able discussion of the whole question.

<sup>10</sup> Report of Board of Internal Improvements, 1834.

ployed and would only leave their occupation for the prospect of extraordinary gain. The work had, therefore, been left to greedy adventurers who alone appeared to bid for the work. The consequence was that "few public improvements had been done in a proper manner and at a fair price." Nevertheless, afterwards their faith seemed still unshaken, for it is declared that "internal improvements were indispensable to the development of the State."<sup>11</sup> After another two years the Board of Internal Improvements refused to recommend any extended system of public works since the State would have to resort to a loan or to taxation and the board thought the time unpropitious for either.<sup>12</sup> In the very next year the advocates and enemies of internal improvement clashed decisively. The fight was in the committee of the Legislature and two reports were brought in.<sup>13</sup> The majority report, signed by four members, was hostile to internal improvements because the State had aided various railroad and other corporations which had secured the profits and left the State to bear all the loss. If the State should enter into any extensive schemes of turnpike building as was proposed, would not this prove the same as others of like character? As for those works that were held to be of national importance, such as the opening of Roanoke inlet, the majority declared that even if practicable it was still a question whether or not the Federal Government has a constitutional right to carry on such works.

In this last sentence is a key to the situation and the whole dispute is further explained by the minority report, which was signed by three members. This report lamented the insane cry which was being raised against railroads as a tool of the rich, since such a cry could only come from a lack of information. A few years before the whole State had been in favor of internal improvement.

<sup>11</sup> Senate Resolution, December 14, 1840.

<sup>12</sup> Report of Board of Internal Improvements, 1842.

<sup>13</sup> Ibid., January 27, 1843.

The minority recognized that a change had come. Why was it? They knew of no error which had been made which would have led to such a revulsion of feeling. The trouble, as they saw it, was that the matter had been dragged into politics and attempts had been made to throw the whole blame on the Whig party, when in truth both parties were responsible; for the movement for internal improvements was the work of men in both. As for help from the general government, North Carolina was not begging aid—she was demanding a right. According to the opinion of the minority it was folly to speak of the unconstitutionality of the action of the general government in aiding public works. That question had been settled. The railroads had been a success and to refuse to build turnpikes would be to shut up the West forever. Not only do we see in the report signs of discord which indicate that the question had been involved in general politics, but in local matters it was still more vital.

## CHAPTER III

### POLITICAL ASPECTS

Here it will be necessary to show the position of the State in regard to national affairs. In the two elections of Jackson, North Carolina cast her vote for "Old Hickory" as she did also for Van Buren. But in the next election she gave her vote to Harrison, and then to the great exponent of Whig doctrines, Henry Clay. In 1848 she continued in the same faith and voted for Taylor, but when the avalanche came that overthrew the Whig party in 1852 she cast her vote for Pierce and against Scott, whom the Whigs thought would ride into the presidency, as Taylor had done, on his military reputation. In the next election her vote went to Buchanan, and in the contest which made Lincoln President she voted for Breckinridge. This brief summary shows the position of the State in regard to national politics.<sup>1</sup> But there were other matters that gave local color to the campaigns throughout almost this whole period. This was the question of free suffrage and equal representation.

The constitution which North Carolina had adopted in 1776 was not a model in every respect.<sup>2</sup> It vested the legislative authority in a Senate and House of Commons. The members of the former to be chosen annually from each county, and of the latter two from each county and one from each of the towns of Edenton, Newbern, Wilmington, Salisbury, Hillsboro and Halifax.<sup>3</sup> To be eligible

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<sup>1</sup> See Stanwood's "History of the Presidency," chs. xi-xxi.

<sup>2</sup> See "Collection of North Carolina Laws," by Henry Potter, 1821.

<sup>3</sup> By convention in 1789. Fayetteville was also granted a representative.

for the Senate a man must have possessed for a year and continue to hold in the county not less than 300 acres of land in fee. For election to the House he must have had for six months and continue to have not less than 100 acres of land in fee or for the term of his own life. All freemen, with the other necessary qualifications, who possessed a freehold of 50 acres of land for six months might vote for a member of the Senate. Any freeman of required residence who had paid public taxes, could vote for members of the House of Commons. All freeholders and freemen who had paid taxes could vote for representatives of towns. Each year at a joint meeting of the two branches of the legislature a Governor and Council of State of seven members were elected.

This was the constitution in force in the early part of the century. It is not hard to see how this would work. The East was old and pretty well settled. The West was young and growing; its counties large and well to do. The natural thing would have been a readjustment of representation so that the West could have a share of representatives according to population. This was stubbornly resisted by the Easterners, as they did not wish to allow the western counties to make their popular majorities felt in the legislature. As one historian of the State at this period says: "A short-sighted and hateful sectionalism disgraced her statesmanship, and dwarfed the efforts of the many distinguished men then in authority."<sup>4</sup> To quote further: "Stubbornly and too often with undue arrogance, the East resisted every appeal to its patriotism and magnanimity. Jesse Speight, of Greene, was the leader of many others, who, like Major Carter, of Hertford, and Jesse Cooper, of Martin, thought that patriotism consisted in an undeviating opposition to all railroads and especially to every proposition looking to alterations in the State Constitution."<sup>5</sup> The same authority shows, as

<sup>4</sup> Moore: History of North Carolina, vol. i, p. 490.

<sup>5</sup> Moore, vol. i, p. 491.

an example of inequality, that Hertford county had a popular vote of less than 600, while Orange had 2500, and yet both had the same influence in State politics. This inequality was rendered all the more conspicuous by the existence of the towns that had representatives. An attempt to secure relief was made in 1823 when a convention—composed of friends of reform—which was called the Western Convention, met in Raleigh. It was presided over by Bartlett Yancey and made several valuable recommendations as to changes in the Constitution.

It was thus that the fight was waged. There was no practicable means of amending the Constitution and the preponderance of influence was given to the small counties around Albemarle sound. While the middle and western parts of the State grew in population and wealth the East grew only in slaves. Having at first obtained the power the East used it to prevent the formation of new counties in the West and so prevented them from gaining the influence their numbers would otherwise have given them. From 1776 to 1848 the legislature was one continual scene of strife between East and West.<sup>6</sup>

The year that marks the crisis in the conflict was 1834. In this year in the legislature, by a close vote, the West, aided by the Eastern borough members, Moore says, succeeded in having passed a bill which provided for calling a convention which was to be limited in its powers. The act<sup>7</sup> provided that a popular vote for or against the convention would be considered an expression of popular will on the following questions: (1) Convention shall amend the Constitution so as to reduce the number of the Senate to not less than 34 or more than 50—to be elected by districts in proportion of public taxes paid into State treasury; (2) shall reduce number of members of House of Commons

<sup>6</sup> History of N. C. R. R., by R. Barringer. Mr. Barringer says the point at which the Legislature gave way was the election of Wm. Gaston to be judge. He was a Catholic and strict adherence to the constitution would have disbarred him.

<sup>7</sup> Laws of North Carolina, 1834, ch. i, sec. xiii.

to not less than 90 or more than 120—and Convention may at discretion exclude borough members totally or in part; (3) the Convention may also consider and propose any or all of the following amendments; to amend the 32nd Article of the Constitution( the article placing disability on all but Protestants) to provide for the election of governor by the qualified voters for members of the House of Commons, etc.

The act met strong opposition in the East but the popular majorities in the West carried it through, and the Convention met in Raleigh June 4, 1830. To it came the best blood of the State, and its president was Nathaniel Macon, a man old in years but strong in intellect and enjoying the widest confidence among the people of his State. The constitution which this Convention framed was submitted to the popular vote and was triumphantly carried by over five thousand majority.<sup>8</sup> Most of the important changes that the enabling act had provided for were passed; such as the abolition of the "rotten borough"; election of governor by people; re-apportionment of members of Senate and House; abolition of religious restrictions, etc. The members from the East insisted that the new arrangement would be unjust to their section, but such a cry could avail little in the face of the policy they had so long pursued. Moreover, the new adjustment was only equitable and right.

The next period was 1848, when the Democrats nominated David S. Reid of Rockingham county in opposition to Charles Manly of Wake, candidate of the Whigs. Reid and W. W. Holden of the Raleigh *Standard* persuaded the Democrats to adopt a platform which declared for unrestricted suffrage.<sup>9</sup> The Constitution of 1835 had retained a property qualification. In fact the struggle in

<sup>8</sup> Moore, vol. ii, p. 30. 26,771 votes for; 21,606 against.

<sup>9</sup> Reid was said to have gotten his doctrine from his kinsman, Stephen A. Douglas. See Moore, vol. ii, p. 71; Barringer's History of N. C. R. R.

the latter year had been compromised "by making taxes the basis of representation in the Senate while federal population was that of the House of Commons. Eastern counties possessed more slaves and wealth, and in this way protected themselves from over taxation."<sup>10</sup>

Reid proposed to change this part of the Constitution and submitted it to popular vote. The Whigs opposed it, although Governor Manly offered as a compromise the election of judges by the people. The East was inherently and forever opposed to a change, just as they had been in 1835. Reid was defeated.

In 1850 the same leaders were put up by their parties but with different success. The old Whig party fell a victim to its own obstinacy. Reid was elected and the Democrats secured a majority in both Houses.<sup>11</sup> The people were coming into their inheritance. Two years later Governor Reid was re-elected by over five thousand votes with a Democratic majority in the Senate. In 1854 the Democrats won a victory under the leadership of Thomas Bragg,<sup>12</sup> carrying the State by a large majority. The cause of free suffrage finally and permanently triumphed as the Constitution was changed by legislative enactments and all white men were made equal politically.

But what has this struggle to do with the question of Internal Improvements? A little reflection will show how intimately they are connected. A glance at a map of the physical geography of the State will furnish a partial answer to the question.

Geographically there are three distinct divisions of North Carolina.<sup>13</sup> The western section is mountainous, the ranges running northeast to southwest, and forming part of the Appalachian system. The middle section is a plateau which descends gradually from an elevation of about

<sup>10</sup> Moore, vol. ii, p. 83.

<sup>11</sup> Ibid., p. 84.

<sup>12</sup> The father of the Captain Bragg who won fame at the battle of Buena Vista.

<sup>13</sup> North Carolina Handbooks, 1879 and 1886.

1200 feet at the foot of the mountains to about 600 or 800 feet elevation through the Piedmont and hill country. The eastern sections extends inland from 120 to 150 miles and may be called level. This portion is intersected by many rivers, some of which are navigable as far inland as 140 miles. The descent from the first to the second of these sections of the State is rather precipitous, being about 1500 feet in a few miles, while from the second to the last there is a descent of about 200 feet." It will thus be seen that the eastern section is blessed with numerous rivers easily navigable and in need of little attention to keep them in condition for purposes of commerce. To quote an old authority,<sup>14</sup> " Navigable rivers are so numerous through all that country, that vessels are tempted to load in a hundred places; and the want of any port, that can be approached by vessels of a large burden, has prevented the commerce of the State from being drawn to a particular point." One other quotation will put the case in a nut-shell.<sup>15</sup> " The example of New York and the general government produced great excitement in North Carolina as to internal improvements. General Wellborn, Dr. Joseph Caldwell and Bartlett Yancey were earnest and unremitting in their efforts to inaugurate a system which should open a way for the transportation of western products to eastern markets. They were met in debate by men who held it as a cardinal virtue to oppose such things, because not specified in the letter of the United States Constitution that the general government should construct such works. They were unwilling to be taxed for improvements they did not need themselves. Nature had given the East abundant water courses and they were content therewith. The people were unwilling to be burdened, and politicians, with their usual venality, pandered to their selfishness and confirmed them in their illiberal

<sup>14</sup> Handbook of North Carolina, 1886, p. 2.

<sup>15</sup> Williamson's North Carolina, 1812, vol. ii, p. 217.

<sup>16</sup> Moore, vol. i, pp. 481-2.

courses. It seemed that the State would be content to go on in the unthrifty way of the miser, who hoards his store and refuses an investment however promising. Other States were attracting the attention of immigrants and building up great arteries of trades, while in North Carolina the mud roads, which grew impassable in winter, and the lumbering wagons of their ancestors were the only means of transportation for two-thirds of the State."

This is the whole secret—the West needed aid in opening up its resources—the East "would none of these things." They had adopted a strict constructionist theory and they applied it to State improvements. The West pleaded for aid not only for itself but for the common good. The East turned a deaf ear or granted assistance so sparingly or divided its efforts so that none of its enterprises succeeded as they should.<sup>17</sup> This, in part, explains the existence of the numerous companies that were organized for opening up the rivers so as to make them as useful to the West as they were to the East. Many of these companies were hampered or failed entirely because of lack of sufficient State aid at the right time. The struggle extended into the sphere of education. The West called for better educational advantages. The East was satisfied with what she had or sent her sons and daughters North. Thereupon the West determined to establish a college for itself, to be located at Lincolnton. It was to be called the "Western College of North Carolina." It was chartered but never went further.

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<sup>17</sup> Barringer's History of N. C. R. R.

## CHAPTER IV

### EVILS TO BE REMEDIED.

It will thus be seen that the struggle for a reformed constitution and free suffrage carried more in it than merely a conflict between those who were out and those who were in. It was a struggle for supremacy—for preponderance in the State. At one time the West proposed to move the capital from Raleigh and came very near doing so.<sup>1</sup> The rivalry can scarcely be said to have ended by the passage of the charter for the North Carolina Railroad from Charlotte to Greensboro, in 1848. Over this bill the struggle was fierce, and it was only saved by the casting vote of Speaker Graves. To us who are accustomed to-day to see economic laws settle the question of the centers of trade and markets, this enthusiasm for forcing internal development seems strange. It will be explained by an inquiry into the evils that were thought to be afflicting the State and the measures which our fathers thought would be a remedy for these internal troubles.

In the first place, North Carolina was large in area and its people were chiefly agricultural. A matter of first importance, then, was to secure a market—and North Carolina wanted a home market. The natural obstructions along the coast prevented the growth of seaport cities. The scattered settlement and vastness of the area, together with the lack of adequate means of communication prevented the growth of an inland metropolis.

The citizens of that day are scarcely to be blamed for not wanting to see the profits from their products go outside

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<sup>1</sup> A graphic description of this fight was given me by the late Hon. D. F. Caldwell, of Greensboro.

the State. Merchants had to buy their supplies in Charleston, Petersburg, Baltimore, Philadelphia and even New York.<sup>2</sup> To meet the debts incurred in these cities purchasers, when possible, sent produce, for the rest money must be remitted, and thus, as was bitterly complained, "Once every year the State was literally drained of its cash." Besides, the state banks could not prevent this—in fact their weakness augmented the trouble. The crying need, it was thought, was a concentration of the State's commerce at one or two points so that a home market would grow up. This would not only keep off foreign debts, but would also leave the profits of trade in North Carolina. This was no small item. "The annual profit made upon our commerce in all other States, and which is totally lost to North Carolina is estimated at more than a half a million of dollars."

As practical illustrations of the disposal of the produce of North Carolina it may be remembered that the products of the northern counties on the Roanoke and ports of the Tar and Neuse went into Virginia, while that from the Broad, and Catawba went into South Carolina. Thus to use a favorite illustration, North Carolina was like a man bleeding at each arm. Of the agricultural products not one-third was shipped from the ports of the State. Of the 38,000 bales of cotton exported from Petersburg, in 1827, 30,000 were from North Carolina.<sup>3</sup> In 1819 it was stated that while the State had 700,000 inhabitants, an area as large as New York, and soil as good as any of the Atlantic coast States, yet the exports from State ports were less than \$3,000,000. The necessity of a home market was emphasized by the distress occasioned by financial stress in 1819. Later, when the Chesapeake and Ohio Canal, and the Baltimore and Ohio Railroad were in process of construction, together with other works in Maryland, Virginia, Massachu-

<sup>2</sup> For a strong presentation of this subject see Judge Murphy's Memorial; also N. A. Rev. for January, 1821.

<sup>3</sup> Leg. Docs., No. 12, 1827.

setts, New York and Pennsylvania, it was thought that it would put "the seal finally on their exclusion from the markets."

It was for this reason that efforts were made to find some place at which the trade of the State could be concentrated. There were several places in view. Of the inlets on the coast there were two from which there was communication with the interior, Ocrakoke and Cape Fear. The latter was considered the best in the State. The Cape Fear inlet was central and it was thought possible to bring to it two-thirds of the trade of the State. The only question was as to which was the best port, Wilmington or Smithville.<sup>4</sup> In 1838, an article setting forth the advantages of Wilmington claimed that there was about the same quantity of water over the bar as over the Mississippi bar, and while New Orleans was 110 miles from the bar Wilmington was only 30 miles from the mouth of the Cape Fear. The tonnage was said to be greater than Richmond or Petersburg, and nearly equal to Norfolk and Charleston.<sup>5</sup>

On the Inlet at Ocracoke was dependent the commerce of the Tar, Neuse and Roanoke. This was a variable channel inside of which was the *swash* over which vessels of more than 8 feet could not pass. In 1830 Ocracoke inlet was said to be the only outlet for over half the State.<sup>6</sup> Every vessel which navigated the Neuse, Trent, Bay, Tar, Pungo, Roanoke, Cashie, Chowan, Meherrin, Perquimans and Pasquotank rivers, and Albemarle, Croatan and Pamlico sounds "must wind their tedious way through a dangerous and obstructed channel to this Ocracoke inlet."

The prices which products in this section commanded were lower on account of the expense of getting them out. Staves, shingles and other lumber did "not command one-third as much as in sections favored by unobstructed com-

<sup>4</sup> Judge Murphy thought the latter had the advantage as it was healthier.

<sup>5</sup> Report of Committee on Internal Improvements, 1830.

<sup>6</sup> *Ibid.*

munications with the ocean." At Murfreesboro and Edenton and other places, which sent produce through Ocracoke pipe staves were worth \$25 per thousand, while at Suffolk, which was only 30 or 40 miles away they were worth \$40, so that the lumber producer paid to this inlet one stave in every three which he sold, the cotton grower one bale in every eight, and the maker of naval stores one barrel in every four.

In order to accommodate that part of the country still dependent on Ocracoke it was proposed to find a new channel at Beaufort which was the best inlet north of the Cape Fear. There were two plans for concentrating the trade of the three northern rivers at Beaufort. One was to run navigable canals from the Roanoke near Williamston to Pamlico near Washington, thence by Swift Creek and Clubfoot and Harlow's creek to the bay at Beaufort. A second was to make a canal between Clubfoot and Harlow's creeks navigable for steamboats, a distance of only two miles through a rich level soil.

These were serious questions. It was not merely access to the sea that was wanted but markets also. To quote from a report of 1830: "Remove the sandy obstruction that locks up from the commerce of the world, and the strength, the wealth, the population and the consequence of North Carolina will increase with a rapidity that will cheer the heart of every well wisher to her happiness."

Not only did the imperative necessity of a home market and access to the ocean force itself on the people of the State, but an additional incentive to effort was found in the fact that North Carolina was fast losing the important place she had occupied in the days of the colonies and earlier Republic. The position of North Carolina when it adopted the Constitution was one of some importance. In the apportionment of Federal representations among the various States, New York and North Carolina each had ten. By 1838<sup>7</sup> it was thought that the coming census

<sup>7</sup> Memorial of Internal Improvements Convention held in Raleigh, December, 1838.

would give New York forty while it was doubted if North Carolina could hold her original ten—and that, too, with an area differing but slightly from that of New York. As a matter of fact, in the election of W. H. Harrison North Carolina had 15 electoral voters while New York had 42. The men of the State saw with alarm large cities growing up to the north of them. Other sections of the country more recently opened than theirs were rapidly filled by immigration, but the tide of settlement seemed not to come toward the Old North State. It was a serious matter. The secret of it lay in the unimproved condition of the State and the difficulty of reaching a market. The lack of a port was a great distress. The treacherous banks along the coast were looked upon as the State's curse. But this was not the whole secret, the State was agricultural. It had water power in abundance but here again lack of transportation facilities was the hindrance to the incoming of industries. In the face of such things it is no wonder that all sections were at length aroused on the question of internal improvement. The State must be put in a condition that would attract settlers for its vast western unoccupied land. It must be made fit for the establishment of manufactures.

## CHAPTER V

### CALDWELL AND GALLATIN

One other thing must be noted in a discussion of this subject. A new fact in the history of the country was the opening of the great West. It meant much to the East, and at once there began a silent struggle for the trade of this vast western country. New York made its bid for it when it built the Erie Canal, and North Carolina also had its hopes that it might draw part of this valuable trade to its coasts. The building of railroads gave another impetus to this idea. It may not be possible to locate the origin of the idea but in its discussion it will not be out of place to connect with it the name of the great advocate of railroads, President Caldwell of the State University. This remarkable man visited Europe with a view of obtaining information that could be used in the advancement of the State.<sup>1</sup> In 1827, before the Committee on Internal Improvements he pleaded for the scheme which he later more fully developed—a road from Beaufort to the neighborhood of Asheville, thus intersecting the State from East to West. In his remarkable series of papers called “Numbers of Carlton,” published in 1828, this plan is fully set forth. While it would be beyond the scope of this paper to give a complete analysis of these papers, yet their importance in the history of railroads entitle them to more than passing notice.

President Caldwell pleads for railroads on the ground of their superiority over canals. He holds the latter to be more expensive in the long run and less satisfactory in

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<sup>1</sup> Centennial address by J. H. Wheeler at University of North Carolina, 1870.

their results. It is interesting to note that the kind of a road he contemplated was a wooden railroad which would cost only about one-half the outlay for an iron one. Taking Newbern as a point of departure for the railroad part of the scheme, the course was to be thence to Raleigh and from that point through the middle of the State to the mountains. This is one of the most curious parts of the whole plan. The road was to go in a direct line without regard to the centres of trade that were already established. It was to pay no attention to the towns. Of the towns which would have been on the road not more than three were as yet of much consequence. These were Newbern, Raleigh and Lexington. It was also to pass through Boone's Ford, Jones Ferry, Haw River, Montgomery Court House and other similar places. The table which exhibited the various distances from the several towns to the road is worth reproduction here as it shows more clearly than anything else the exact section through which it was to run.

Greensboro .....	21 miles.	Oxford .....	38 miles.
Asheville .....	22 "	Pittsboro .....	5 "
Charlotte .....	38 "	Rockingham ...	51 "
Concord .....	26 "	Salisbury .....	5 "
Greenville .....	22 "	Statesville .....	10 "
Hillsboro .....	20 "	Tarboro .....	33 "
Lewisburg .....	30 "		

This railway was based on the assumption that the State was, on an average, about 100 miles broad. To run the road thus through the centre the greatest distance on either side would be about fifty miles, which would amount to about two days' travel with a loaded wagon. The watchwords that President Caldwell adopted were "Union—Central Locality—Utility." This road would settle the disputes between sections and harmonize long divided counsels. It was hoped that soon another road would cross the State in the other direction.

The estimate of the cost of the road in the level section was put down at \$2649 per mile. This was to be met by a poll tax of 37 cents (later, he says 40 cents) or less than \$3 in seven years. This would raise \$50,000 and capitalists would add a like sum.

The plan was, further, to begin the road at Newbern and not on the coast because it was nearer to Beaufort from Newbern by water than by land and as the means are ready at hand a canal would be cheaper. From Newbern the course would be through Harlow canal by boat to Beaufort. This canal would be widened and deepened so as to admit steamboats and no lock would be necessary. This would make connections between the interior and coast complete and would give the State a harbor equal to Norfolk or Charleston and much healthier than the latter. Beaufort had heretofore been neglected as a harbor because of the lack of means of communication with the interior. Among the advantages claimed for this plan were the facts that Beaufort had an excellent harbor and inlet and was the healthiest seaport town south of the Chesapeake. Again, it is almost in the middle of the coast line of the State—only 26 miles to the south of the middle point. It was predicted that Norfolk would never realize the hopes of her friends as a seaport town, while Beaufort had back of it a prosperous part of the State. Twenty counties would be accommodated by the enlargement of Harlow canal—and by opening it for steamboats the State “could enter into competition with other markets, and trade with Europe, the Mediterranean, South America and the West Indies as well as the rest of the United States.”

Two years earlier the State of Virginia had appropriated \$150,000 to make the Dismal Swamp navigable for steam-boats. The object was easily seen. It was to draw the trade of the Roanoke, Albemarle and Pamlico to Norfolk. All this trade properly belonged to Beaufort and would find its way there if it had a proper channel. So a mix-

ture of self-preservation and alarm, with some jealousy, strongly urged the adoption of some such scheme as this. The one offered by President Caldwell may have been visionary and may have shown little insight into the economic reasons for development of centres and routes of trade, but it is closely related to a greater idea that was advanced, not by North Carolinians but by a Boston man. "The boldness, originality and apparent practicability" <sup>2</sup> of the plan appealed to the men of the State.

Quietly but surely New York and Philadelphia were drawing to themselves the trade of the great west now rapidly opening up. The rivalry was short but sharp and decisive. It was soon apparent that unless something was done New York would soon monopolize the trade to the complete exclusion of the other coast states. The plan now presented might not be able to take away the importance of New York as a port of departure for Europe but it would force western products to pass through the entire length of the State of North Carolina.

The scheme was, in short, to open a route as a rival to the Erie canal route and compete with it in its own territory. The idea was, with New York as a point of departure, to open a new route to the Mississippi river at the mouth of the Ohio. The Northern route was from New York to Albany, to Lake Erie, to Cleveland, through the Ohio canal, to Cincinnati, to Louisville, to the Mississippi, the total length of the route being 1938 miles, of which 1105 was free navigation and 833 subject to toll. By the proposed plan through North Carolina and Tennessee, the route would be from New York to Newbern by sea passage, 460 miles, thence from Newbern by rail by Fayetteville by Rockingham, Charlotte, Asheville, Knoxville to Nashville, and from this point by the Cumberland river to the Ohio and thence to the Mississippi. The total dis-

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<sup>2</sup> The originator was a civil engineer, Mr. Sullivan. See Report of Board of Internal Improvements, 1833.

tance would be 1223 miles, of which 670 would be free navigation and 553 subject to tolls. The amount saved by the southern route would be in the whole distance 715 miles and the distance tolled would be 280 miles less than the northern route. Not only was this route the shortest and cheapest to the Mississippi but it also would reach the head of the Tennessee river at a point 875 miles distant from New York, two-thirds of which was free navigation. This would furnish the cheapest entrance to Alabama.

There could be no rivalry from Virginia enterprises of a similar character, because the Chesapeake and Ohio Canal had so great an ascent, that it virtually increased the distance to a considerable extent. Over the northern route the proposed new one had one chief recommendation besides its cheapness and shortness. For five months in the year the northern canals were closed by ice. The Pennsylvania canal was closed for four months, the Potomac for three months, while the Ohio itself was generally frozen for a time and for two months in summer it was too low for navigation. The southern route was free from this very serious objection. It would afford open passage to the Ohio all the year around.

This was the general outline of the plan. One variation would have discarded the use of the Cumberland and would have provided railroad communication from the banks of the Ohio to the tidewaters of the Carolinas and Georgia. In fact this was the plan urged at a meeting of citizens in Cincinnati in August, 1834, and it met with favor from the citizens of Georgia and South Carolina.<sup>3</sup>

It will be safe to characterize this project as still-born. It was never put into effect as contemplated, yet the railroads of the State to-day virtually do what this was intended to accomplish. But the traffic of the West does not yet pass through North Carolina's gates. The reason is simple

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<sup>3</sup> Governor Swain's Message, 1835.

enough. When once the idea of railroad building was firmly fixed and lines were in actual operation, it was as easy to load a car for New York direct as for Newbern, where it would have to be unloaded. It was an unequal strife, and, even if the plan had been carried out as projected, it cannot be believed that it would ever have accomplished the desired end. Yet the idea was in itself a stimulus to internal development and the notion of a road connecting the East and West of the State has been realized by the connections which join Beaufort and Murphy.

What may be termed an interesting survival of the old idea remains in the State to-day, although its origin is referred to a much later date. In 1860 there was chartered in the State a railroad known as the Atlantic, Tennessee and Ohio.<sup>4</sup> Its purpose was to connect the Atlantic and the Ohio river by a road through North Carolina, Tennessee and Kentucky. The rails of the road were taken up in 1863, but re-laid in 1871. It never touched either of the points named in its charter and it is there to-day, connecting Charlotte and Statesville, touching only about half of two counties.

The second important general scheme which next demands our attention is the plan which owes its origin to the genius of Albert Gallatin.<sup>5</sup> He and Thomas Jefferson were one in their ideas as to the necessity of internal improvements, but Jefferson thought an amendment to the constitution would be necessary to render undisputed the right of the general government in the matter. Gallatin had no scruples on this score. In 1802 his ideas had found expression in the act which gave rise to the national road. In 1807 \$50,000 were appropriated to lay out the Cumberland Road from the Potomac to the Ohio. A little later a resolution was introduced by Senator Worthington of Ohio which directed the Secretary of the

<sup>4</sup> A similar act had been passed by Tennessee in 1852.

<sup>5</sup> See Adams' Life of Albert Gallatin, pp. 350-352.

Treasury "to prepare and report to the Senate a general scheme of internal improvement." Gallatin took a year to prepare his plan and it was presented to the Senate on April 12, 1808. There were three divisions of the plan as outlined by the Secretary, but we will consider only the first, viz.: Improvements along the seacoast, cutting Cape Cod, New Jersey, Delaware and North Carolina by canals so as to secure inland navigation as far south as Cape Fear; and a turnpike road from Maine to Georgia. The estimated cost for the inland navigation was \$3,000,000 and for the road \$4,800,000, and the estimated cost of the entire scheme was \$20,000,000.

The plan was meant to satisfy all localities and by establishing a national system he hoped to avoid the "log-rolling for local appropriations in Congress and all its consequent corruptions and inconsistencies." Part of this scheme was intimately connected with North Carolina and fitted in closely with her plans. Several years after it was presented by Mr. Gallatin, the attention of the Legislature was recalled to the plan by the Board of Internal Improvements and was favorably commented upon. The fundamental idea of the whole was to secure safe inland navigation along the entire Atlantic coast, or at least as far as Georgia.<sup>6</sup> There were four necks of land that interrupted such navigation: "the isthmus of Barnstable; that part of New Jersey which extends from the Raritan to the Delaware; the peninsula between the Delaware and the Chesapeake; and that low and marshy tract which divides the Chesapeake from the Albemarle sound." Mr. Gallatin further says: "It is ascertained that a navigation for sea vessels drawing eight feet of water, may be effected across the three last; and a canal is also believed to be practicable, not, perhaps, across the isthmus of Barnstable, but from the harbor of Boston to that of Rhode Island. The Massachusetts canal would be about twenty-six, the New

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<sup>6</sup> American State Papers, Miscellaneous, vol. i, p. 724.

Jersey twenty-eight, and each of the two southern about twenty-two miles in length, making altogether less than one hundred miles."<sup>7</sup>

The estimated cost of this work was placed at \$3,000,000 and its completion would mean much to the country. A sea-going vessel would enter the first canal at Boston harbor, pass through the Rhode Island bay, Long Island sound, the harbor of New York and reach Brunswick on the Raritan. It would then follow the second canal to Trenton where it would meet the Delaware. It would follow this river to Christiana or New Castle; then through the third canal to Elk river and the Chesapeake. Down the Chesapeake Bay and up Elizabeth river it would enter Albemarle sound through the fourth canal. Then by Pamlico, Core and Bogue sounds it would reach Beaufort, North Carolina. From Beaufort vessels of smaller draught could be made to reach the Cape Fear inlet by cutting two small necks of land. Below this point inland navigation could be continued between the outlying chain of islands and the coast of South Carolina and Georgia.

It will be seen from this that one of the four canals would be necessary in order to secure an entrance to the Albemarle sound. The shortest route from the Chesapeake to the Albemarle, which was only about seven miles, was rendered useless by the bar in Currituck inlet, which would not admit vessels drawing five feet of water. The second route was through the Dismal Swamp canal, which then extended twenty-two miles from Deep creek to Joyce's creek, a branch of the Pasquotank. To make it a part of the system it would be necessary to bring it up to the dimensions intended for the Delaware and Chesapeake canal. The cost of doing this work Mr. Gallatin estimated at \$250,000. This was the route recommended and it was thought that "the deepening of this communication will be more easy and less expensive than either of the

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<sup>7</sup> American State Papers, Miscellaneous, vol. 1, p. 720.

three northern canals." A necessary complement of this whole scheme was the road from Maine to Georgia, which was to follow the coast, "passing through all the principal seaports." The distance was about 1600 miles and the cost was not to exceed \$3000 per mile.

This bold plan of Gallatin attracted much attention and met with widespread approbation. It is probable that an effort to carry out the idea would have been attempted if complications had not risen in regard to American foreign relations.<sup>8</sup> The war with Great Britain still further interrupted its execution, but after the war it was again strongly urged. The struggle with England had brought home to the nation a new need, the necessity for a means of transporting war materials to points on the coast and the maintenance of the coast trade even in defiance of blockade. Another thing that had been mentioned before but was now brought up again is the connecting by roads of the highest navigable points on the Atlantic rivers with points on streams flowing into the Lakes and the Mississippi.<sup>9</sup>

To North Carolina Gallatin's plan was very acceptable. The Secretary, before he made his great report, had had surveyed a part of the route. In 1818 additional surveying was done by Messrs. Price and Clemmens and, in 1822, the remainder by Mr. Fulton, the State surveyor. If the plan of connecting Norfolk and Beaufort were carried out North Carolina confidently expected to see all the coasting trade of the United States pass that way in order to avoid the dangerous navigation around Cape Hatteras, and if the canal could be so constructed as to admit of steam navigation at the rate of ten or twelve miles per hour all the travelling from North to South and *vice versa* would be by this route for nine months in the year.<sup>10</sup>

<sup>8</sup> Report of Committee of House of Representatives, February 8, 1817. American State Papers, Miscellaneous, vol. ii, p. 420.

<sup>9</sup> Senate Committee, 1817. American State Papers, Miscellaneous, vol. ii, p. 424.

<sup>10</sup> Report of Board of Internal Improvements, 1833.

Moreover, it was of more than passing interest to Eastern North Carolina, for it offered to open up her forests of pine and oak for use at the Norfolk navy yard. In case of war it could supply the latter place with abundant naval stores. Finally, it meant much to North Carolina if she could get access to the ocean through some other means than by Roanoke inlet. The proposed connection would give this.

In 1833, when the Delaware and Raritan canal was nearing completion and promised direct inland navigation from Stonington, Connecticut, to Elizabeth City, North Carolina, it was thought that Mr. Gallatin might yet see his magnificent scheme a fact. Yet, although the actual work might have been accomplished, yet it is not too much to say that the scheme would never have realized all it was hoped. When railroads became the dominant mode of transportation, the inland navigation system was no longer a necessity. To-day an examination of the shipping lists of the United States will show that Hatteras still demands her yearly sacrifice of property and life. The coasting trade has not come inland and Beaufort has not grown into a great metropolis. The western trade has not yet turned toward North Carolina and her centres of trade and great markets are yet to be. But these schemes did turn men's minds to their own State and helped to begin the development which continued down to the Civil War. It may not be too much to say also that the movement aided in holding back the tide which was carrying thousands of North Carolina's citizens to other States.

## CHAPTER VI

### REASONS FOR FAILURE

It may be safely said that the early efforts for internal improvements were prompted by purely local reasons. The State needed better means of communication. The roads were bad, the rivers were not navigable in many places and it was to obviate these hindrances that the movement began. The State also lacked a home market. The people thought that Virginia and South Carolina got more than their share of North Carolina products. The hope of keeping at home her own products, or of at least securing the middle man's profits was thus also an incentive for work of this kind. They wanted cities, they wanted to check the tide of emigration that was flowing away from her borders. Slave labor certainly had much to do with keeping the movement of settlers from North Carolina, but that alone could not explain the slow growth of the State and the great numbers that were every day leaving her shores. The Committee on Internal Improvements in 1815<sup>1</sup> reported that within twenty-five years 200,000 people had left the State for the region of the Ohio and the Tennessee.

This calls up another fact that was important in giving an impetus to the movement for development in North Carolina. This was the opening of the West. As was the case in North Carolina so it was in other States. Each was pouring a stream into this region.<sup>2</sup> Full figures as to this wonderful exodus can never be had, but the result was soon seen. Towns sprang up with astonishing rapid-

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<sup>1</sup> Report of Committee on Internal Improvements, 1815.

<sup>2</sup> McMaster: History of the People of the United States, vol. 4, ch. xxxiii.

ity, while in the East some were almost depopulated and all were checked in their growth.

As soon as the West was to be reckoned with as a factor in the economy of the nation, there began a sharp rivalry for the trade of the favored section. New York moved rapidly and vigorously. July 4, 1817, work was begun on the Erie canal, "the greatest piece of engineering up to that time attempted in the United States." Philadelphia was alarmed at the vigorous efforts being made by her neighbors and woke up to the importance of the matter. Her more central location gave her advantages. Her early prestige as the most important city of the early days was also in her favor. Wonderful schemes were discussed for turning the western trade to her. It was actually soberly stated that only 75 miles of canal would be all that was necessary to give water communication between Philadelphia and the Pacific coast. She also even hoped to tap Central New York and catch the trade of that region. "The trade of the Great Lakes, of the Ohio, of half the Mississippi, of all the region drained by the Missouri, of three-fourths of Pennsylvania, and one-third of New York" was thought to lie within their reach. Further to the southward, Baltimore was also eager for this western trade. Pikes and canals were considered and it was thought possible to concentrate on the Chesapeake the trade of the newly-opened region.

We have seen how North Carolina entered into the contest. The great scheme for a central railroad had for its object the bringing of the products of the West through the State to the coast. Some of the reasons why this did not succeed may be noted. In the first place, the tide of trade had already set in other directions and it was too late to be checked. New York soon secured the ascendancy and the opening of the canal in 1825 rendered its place permanent. The canal was a success from the start. It also threatened the trade of Philadelphia. The route to New York was shorter and cheaper and the

astonishing growth of that city soon showed what the trade of the West meant to it.

A perfect mania for internal improvement seized all States and this was greatly accelerated a little later by the coming of the railroads. By the time North Carolina moved in the matter, it was too late. President Caldwell's scheme was submitted in 1828 when New York already held the lion's share of the trade. That part which did not go to her was eagerly seized by Philadelphia and Baltimore.

The various plans for drawing this trade through North Carolina all recognized one fact—the trade by any route would go to New York. At best, it was but hoped that North Carolina might cause the trade to pass through her borders, and give to her coast towns only the secondary importance that might be obtained as points for reshipping. Some, it is true, hoped to see North Carolina not only catch the Western trade, but also saw visions of a day when Beaufort should be the metropolis of the whole Atlantic coast. But they were not long left in doubt as to the real result of the contest between the sections and saw that Beaufort could never hope to be more than a point of departure for the coasting trade.

It is naturally asked why North Carolina could not secure the Western trade and so become the market for Europe. It is very easy to understand the reason. North Carolina was an agricultural State and manufacturing industries were few and small. The North had long controlled the ship-building interests of the country, forced into it by the nature of the land. So now also North Carolina and the South had only farm products with which to back their schemes for development. The people lived well, but they had no money. Their products were disposed of in exchange for manufactured products and little capital was accumulated by the very wealthiest men. They were merely big landholders, often so large as to be "land poor."

To fully take advantage of the Western trade, it would have been necessary to secure communication, not with New

York but directly with Europe. This was impossible for North Carolina, even if her people had thought of it. She had not the means for great things, and so she spent her resources in following futile schemes of local improvement. New York had seen and seized the opportunity. By the time the Erie canal had opened to her the door of prosperity in one direction, she had packet lines to Europe—sixteen packets sailing regularly between the city and Liverpool—and others with other places. “Ten million dollars had been collected in duties in one year, a sum larger by eighty thousand than in the same time had been gathered at the custom houses of Boston, Philadelphia, Baltimore, Norfolk, and Savannah combined.”

So the dream of a great Western trade for North Carolina and of markets in which the merchants of the world should compete was doomed to failure from the start. The only effect which the plans had was to encourage a spirit of enterprise and aid in local development.

PART II  
CHAPTER I  
RIVERS

CAPE FEAR NAVIGATION COMPANY

It will now be necessary to outline more minutely the various kinds of work undertaken by the State. The number of rivers and the facility of navigation give to this part of the subject a distinct preeminence. As early as 1784 an act was passed looking to the improvement of rivers and creeks and for the prevention of obstructions to navigation.<sup>1</sup> By this act the county courts were to have power to have new roads laid out and to establish ferries, bridges, etc. Roads were to be 20 feet wide with "stumps and runners" cleared for the width of 16 feet in the centre of the road. Bridges were to be likewise 16 feet wide. The work was to be done under an overseer appointed annually; all male taxable persons from the age of 16 to 50, except such as were excepted by Assembly, were to be liable to road work. The county court could also appoint commissioners to inspect any inland streams in the county and to make out a scale of the expenses of clearing and opening the same. The commissioners might also proceed to open the stream in the most expeditious manner, provided it "shall be deemed within the compass of the abilities of the county, and that the burden will be compensated by public utility." It was also made a crime to fell trees into a river so as to obstruct the passage of boats.<sup>2</sup>

Thus we see that large powers of action were left to the counties. It is not necessary to go into a detailed account

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<sup>1</sup> Laws of 1784, ch. 227; amended 1785, ch. 242; 1796, ch. 460; 1790, ch. 331.

<sup>2</sup> Laws of 1796, ch. 460, sec. 2.

of the progress of the general laws in regard to rivers, but it will be more to the point to take up the important attempts at improvement undertaken by the State and show the object in view in each and how they succeeded. The opening of these rivers was usually by means of companies organized for the purpose, which had certain privileges granted them and received aid from the State. Judge Murphy in his memorial on the subject of Internal Improvements<sup>3</sup> discusses the plan of the joint committee of the two houses of the Legislature in 1815. That plan may be generally outlined as follows. 1. Companies were to be formed and incorporated for improving the navigation of the principal rivers. The said companies have to hold their rights and privileges forever. 2. These rights and privileges of the company were to extend from the source of the river to its mouth or to the State line and to all tributary streams. 3. Each company should be entitled to levy such tolls as would yield 15 per cent on capital invested. 4. The State should subscribe one-third of the capital stock of each company.

The opening of these rivers was a matter of first importance. The undertaking was rendered difficult by the fact that a granite ridge runs through the State from northeast to southwest almost parallel with other ridge-like formations, and consequently at right angles with the course of the rivers. Above the ridge are shoals and falls that obstruct navigation, and these had to be obviated.

As it would be impossible to understand from a general view the work undertaken and carried out, the various attempts will be discussed separately. The first to be considered will be the

#### CAPE FEAR NAVIGATION COMPANY

Moore, in his History of North Carolina,<sup>4</sup> speaking of the legislation of 1792, says: "A company was chartered for

<sup>3</sup> See N. A. Review, vol. 12, 1821. An article by Jared Sparks.

<sup>4</sup> Vol. i, p. 411.

improvement of Cape Fear River from Fayetteville to the confluence of Haw and Deep rivers." With characteristic brevity and unsatisfactoriness he thus dismisses the beginning of an enterprise that has been important all through the State's history. This act recites the fact that it has been represented that it is practicable to render easy and safe the navigation of Cape Fear river from Fayetteville to the confluence of the Haw and Deep rivers; that it will be greatly to the advantage of the western part of the State, since the point of confluence is within 25 miles of the permanent seat of the government and 18 miles from the place selected for the seat of the University; 35 miles from Hillsborough and 9 miles from Pittsborough. In consideration of these things the Cape Fear Company was incorporated.<sup>5</sup> The greatest interest in the company dates, however, from 1796, when an act<sup>6</sup> having the following preamble was passed: "Whereas the navigation of Cape Fear river from Averysborough up to the confluence of Deep and Haw rivers, and of each of said rivers as far as can be effected, would be of important public utility; and many persons are willing to subscribe money to effect the work, and it is just that such subscribers, their heirs and assigns, shall receive reasonable tolls in satisfaction for the money advanced by them to execute the said work, and for the risk they run, Be it enacted," etc.

Books were to be opened in Chatham and Randolph counties for subscriptions which should "be made personally or by power of attorney, and shall be paid in Spanish dollars, but may be paid in silver or gold coin of the same value." Subscriptions to the amount of \$8000 were to be taken, and when half the amount was subscribed the company was to be declared incorporated and elect a president. At the first general meeting each subscriber was to pay \$5 per share, after which president and directors were to levy payments on the subscribers as needed, provided they should not de-

<sup>5</sup> Laws of North Carolina, 1792, ch. 370.

<sup>6</sup> Laws of 1796.

mand more than \$10 a share in one year. The necessary property was vested in the Company for a period of 99 years and was to be deemed real estate and be free from taxation or assessment. An extended rate of tolls was established by the act and the collector given power to seize and sell boats that failed to pay, although "Every empty boat that has carried its load and paid the tolls, on its return shall pass free from tollage." The company was given ten years in which to complete the work. In case of failure to do so "the preference in favor of the said company with respect to the said navigation shall be forfeited."<sup>7</sup>

An amending act passed the next year gave the company power to remove obstructions and also allowed them to close subscription books whenever they thought it proper. Another and still more extensive amending act was passed in 1815, by which all the rights and privileges were granted the company that had been granted the Roanoke Navigation Company three years before.<sup>8</sup> In addition it was specified that these privileges should extend from the sources to the mouth of the river, and subscription books were to be opened to increase the capital stock to a sum not exceeding \$100,000 which was to be divided into shares of \$100. The act was to have effect if half of the stock had been subscribed by the first Monday of the following June, in which case the company was authorized to regulate the tolls from time to time instead of leaving rates to be specified by the act, provided the profits therefrom should not exceed 15 per cent upon capital stock after expenses of company in the way of salaries, repairs, etc., had been paid. The treasurer of the company was authorized to secure a loan from the banks of Newbern and Cape Fear to the amount of \$15,000 and the banks were empowered to become subscribers to the capital stock. The company was further given power to increase its stock if it was found necessary

<sup>7</sup> Act of 1796, secs. 1, 2, 4, 7, 10.

<sup>8</sup> Secs. 4 to 19, inclusive, of Roanoke Navigation Company's charter to apply to C. F. Co.

to complete the work and was allowed to build toll bridges over the river. A proviso was included that in the event of the State becoming a holder of any of the shares, it might appoint a director of the company whenever the General Assembly should think proper.<sup>9</sup>

There seems to have been delay in securing money, for in 1821 the president and directors of the company were authorized to repeat their call on stockholders that had failed to pay their instalments,<sup>10</sup> and two years later the State made an appropriation to the Company.<sup>11</sup> By the act of this year the Board of Internal Improvements was authorized to subscribe \$25,000 in the part of the State for "completing the navigation of the Cape Fear river from the town of Wilmington upwards." This was made on two considerations: (1) Stock was to be reduced from its nominal value of \$100 to not more than \$50, and (2) the Board of Internal Improvements was to have charge of the direction of the works. The work was to begin at Wilmington and proceed up the river as far as capital stock would admit. This act seems to have been a result of a former act which instructed the board to ascertain if the various navigation companies of the State would put themselves under control of the board.<sup>12</sup>

From various indications it may be judged that it was not smooth sailing for the enterprise—at least that the State was not fully satisfied with the conduct of the work. Probably the agitation over railroads had something to do with the dissatisfaction. At any rate certain resolutions indicate friction. A resolution of 1835 instructs the Governor to sell the dredging machine that had been used on the river and which was then lying in an exposed position near Wilmington.<sup>13</sup> The next year another resolution directed the Governor to institute suit against the Cape Fear Navigation Company for \$1375 dividends due the State.<sup>14</sup> Before this,<sup>15</sup>

<sup>9</sup> Act 1815, secs. 2, 3, 5, 7, 8, 9, 10, 11.

<sup>10</sup> Act 1821, sec. 3.

<sup>12</sup> Laws of 1821, ch. 16, sec. 3.

<sup>14</sup> Resolutions, 1836.

<sup>11</sup> Laws of 1823, ch. 16.

<sup>13</sup> Resolutions, 1830.

<sup>15</sup> Report of Committee, 1832.

however, a committee on the Cape Fear Navigation Company had reported to the Legislature, which had brought out the fact that \$42,761.76 had been expended on the river. An examination of witnesses showed that tolls had been paid, but that the passage of the river had not been materially improved. The committee was of the opinion that the work had not been judiciously applied, for if it had, results would have been greater. Judging from results, they would have to conclude that the river was not susceptible of improvement, and this they would not admit.

On the other hand, the agent<sup>16</sup> claimed that the work had been judiciously done. In the first place, the snagging of boats had formerly been frequent; second, the shore at various places had been improved. Rates of freight had also been lowered. Before the work the rate for cotton had been 75 to 100 cents per bale, while now it was but 25 to 35 cents, including 10 cents toll. If the work had not been done steamboats could not have run at all. That they did run was shown by a memorial from an Internal Improvement convention in 1838, which said that steamboats had been running on the Cape Fear as high as Fayetteville for the last 20 years. In 1823 the company gave up the control of the works to the Board of Internal Improvements, which had expended \$12,143.13 and had reported the river clear of obstructions between Fayetteville and Wilmington and expected that henceforth tolls would have to keep the river in order. In 1834 these tolls, as reported by the agent, were \$5090.95,<sup>17</sup> while the next year there was said to be but little trade of consequence done by the company.<sup>18</sup>

<sup>16</sup> Geo. McNeill.

<sup>17</sup> Report of Agent of C. F. Nav. Co. to Bd. of I. I. for year ending May 30, 1834.

<sup>18</sup> Rept. of Bd. of I. I., 1835; Rept. of Pres. of C. F. Nav. Co., December, 1852.

The tolls for a series of years were as follows:

Amount of tolls of 1828 .....	\$2,844.10
"      "      1834 .....	5,090.95
"      "      1842 .....	3,125.03
"      "      1848 .....	5,010.22
"      "      1852 .....	8,443.81
Total tolls from 1828-52 .....	\$106,141.67

In 1834 tolls are reported to have more than doubled in the two years preceding, amounting the year before to \$12,524.68 and paying a 10 per cent dividend.<sup>19</sup> In 1836 the Board of Internal Improvements was directed to inquire into the affairs of the company to see if they had used the funds honestly and if it would not be advantageous to the State to buy the charter. Inquiry was also to be made as to the terms on which the company would sell and also if the company would not voluntarily surrender that part of their privilege which extended above Fayetteville.<sup>20</sup> The reply of the company was that they would sell the stock and all corporate rights for \$50 per share provided arrangements could be made to secure the removal of such obstructions as may from time to time get in the river.<sup>21</sup>

A few years later it would seem that the river had not been kept in a good condition, as it was proposed to render it navigable to Fayetteville, and thence form a connection by turnpike to the Yadkin.<sup>22</sup> The statement of the State's finances for the same year shows that it held 650 shares of stock in the Cape Fear Navigation Company, the amount which it had had for some time.<sup>23</sup> Two years later this same company was one of two in the State which had not lost their chartered privileges by non-user.

All this work was for the Cape Fear proper. In 1849 the State subscribed \$40,000 for the Cape Fear and Deep River Navigation Company, to improve the river above Fayetteville, and that prong of the stream known as Deep River. The next year an amending act provided that the State's subscription of \$40,000 should be paid when \$20,000 had been paid in by subscribers and when two other payments of \$10,000 had been paid in by subscribers the State was to make two extra payments of \$20,000 each.<sup>24</sup>

<sup>19</sup> Rept. of C. F. Nav. Co., 1854.

<sup>20</sup> Resolution, Session 1836-37.

<sup>21</sup> Report of Board of Internal Improvements, 1838; letter of agent of company.

<sup>22</sup> Governor Morehead's Message, 1844.

<sup>23</sup> Treasurer's Report, 1844.

<sup>24</sup> Laws of 1850, ch. 133.

After this the State had to pay interest on the bonds of the company for a time and was liable for the principal.<sup>25</sup> In 1858 it was provided that if the sale of the company should take place before 1861 the Governor was authorized to bid not more than \$450,000. If bought it was to be in the hands of a board of managers who could draw on the treasury for \$50,000 for two years for means to improve and keep in repair the works on the river.<sup>26</sup>

Part of the Cape Fear river was below Wilmington, and this also required considerable attention. In 1826 an appropriation of \$5000 was made out of the internal improvement fund for improving this lower part.<sup>27</sup> The next year a similar appropriation was made to the amount of \$6232.<sup>28</sup> In 1829 the Federal Government took charge of this work. The river was obstructed to such an extent that vessels drawing over ten feet of water had to anchor 14 miles below Wilmington. It was first attempted to deepen the channel by contracting it by jetties and by turning into it the water from Brunswick river and Fishing and Rodman's creeks. On this work \$203,204.59 were spent.<sup>29</sup> About 1853 it was proposed to deepen the main entrance. At this work \$156,296.26 was spent in a few years, but the task was not completed. Since the war a considerable amount has been spent both in new work and repairs.

The general object in view in all this work undertaken and carried on by the State was to clear a ship canal below Wilmington and to render the river navigable above for steam vessels with boats in tow.<sup>30</sup> Between Wilmington and Fayetteville steamboat passage was expected to be opened for use during ten months in the year. The work was at first entered into with much spirit. The shares of stock in

<sup>25</sup> Governor Bragg's Message, 1858.      <sup>26</sup> Laws of 1858, ch. 142.

<sup>27</sup> Laws of North Carolina, 1826, ch. xviii.

<sup>28</sup> Laws of North Carolina, 1827, ch. xxxiv, vol. 3.

<sup>29</sup> House Ex. Docs., 1890-91.

<sup>30</sup> "A Connected View of the Whole Internal Navigation of the United States," etc. By a Citizen of the United States, Philadelphia, 1830.

the company sold easily. A town was laid off in Chatham county and promised to attain considerable size. The company adopted the plan of sluice navigation and the results were not very encouraging. It is said two out of every three attempts to descend the river failed.<sup>31</sup> Recourse was then had to canals and locks with better success.

After the war the company was a prominent factor in politics. During Reconstruction it attained notoriety in connection with the wholesale fraud of that period.

#### ROANOKE NAVIGATION COMPANY

Roanoke river flows into Albemarle sound and drains the northeastern part of the State. The Dan, which flows from North Carolina into Virginia, is one of its principal parts. Inside the Virginia line the Roanoke turns back southeastward into North Carolina. At present it is navigable to Weldon, which is almost 100 miles from its mouth. The object in view in its improvement was to open more fully the land drained by the upper Roanoke. This was actually done and at one time the river was navigable to Danville, more than twice the present distance. While all along its upper course there are stretches of navigable water, yet the passage is interrupted at frequent intervals. The company organized to render this stream navigable was one of the most important chartered in the State, and its history deserves to be noted in detail.

The original act<sup>1</sup> was entitled, "An act for improving the navigation of Roanoke river from the town of Halifax to the place where the Virginia line intersects the same."

The law provided for the opening of books of subscription at Edenton, Plymouth, Windsor, Halifax, Warrenton, Oxford, Rocksborough, Caswell Court House, Wentworth, Germantown and at Raleigh, thus making it convenient for people all through the section interested to take stock, the amount of which was fixed at \$100,000. The State was to

<sup>31</sup> American State Papers, vol. xx, p. 866.

<sup>1</sup> Laws of 1812.

have up to a certain day the right to subscribe for 200 shares in preference to any other subscribers. The company was to be declared incorporated when 400 shares should be subscribed, and a president and four directors were to be elected for a year. This board was to open the river from Halifax westward to the Virginia line by canals, locks, or sluices, and had the right to levy tolls. Most of the provisions as to powers and duties were similar to those of the Cape Fear Company. The rates of tolls were fixed and the Legislature could change them, but not so as to cause them to fall below 15 per cent on capital stock. Ten years were given for the completion of the work.

The first amending act<sup>2</sup> was passed three years after the original act and provided for an increase of stock to \$300,000, of which the State was to take 250 shares if necessary. While the original act gave the company rights to the Virginia line the amended act extended their privileges from the mouth to the source—so far as it was in the State. The State was to have a vote in the general meetings of the stockholders and was to be represented by the treasurer of the company. At the falls of the river near Halifax the company was authorized to construct a turnpike until the navigation of the river could be improved at that place. The company was granted permission to charge toll rates and to borrow money to the sum of \$25,000.

The company proceeded to organize under this act in October, 1816. Some doubt as to the legality of the organization arose because the enabling act had provided that organization should be effected in the preceding June. At that time, however, on account of the lack of returns as to subscriptions, it was impossible to decide whether or not the required number of shares had been obtained. In order to remove all doubt on the subject the Legislature passed an act declaring valid the proceedings of the subscribers at the meeting in Halifax in October, 1816.<sup>3</sup>

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<sup>2</sup> Laws of North Carolina, 1815.    <sup>3</sup> Laws of North Carolina, 1816.

This act further provided that those persons who had subscribed for stock under the original act of 1812 should be enrolled in this company. The place for meeting for stockholders was fixed at Halifax and the dividends allowed were to be paid on stock actually paid in for the purposes of the company. The amount of real estate which the company could hold was limited to \$50,000, above that which was necessary for the work of the company. Navigation was to be completed within 20 years from January 1, 1818. This more than doubled the original time allowed.

These acts fixed the rights of the company so far as North Carolina was concerned. But part of the river was in Virginia, so it was necessary to secure a charter from that State also.<sup>4</sup> The Virginia act recites the fact that North Carolina has made various enactments concerning the company and that "it is indispensably necessary that the State of Virginia should aid this object, and assist an undertaking so extensively and intimately connected with the prosperity and interest of this State,"<sup>5</sup> and it further declares that "the interest of very many of the good people of this Commonwealth requires that the improvement of the navigation of the Roanoke river and its branches, capable of being made navigable both in North Carolina and Virginia, should be begun and completed as early as possible, and that the right to improve the navigation of the said river shall be vested in one company."<sup>6</sup>

The act thus grants exclusive right to improve the river to the North Carolina company as far as a part of the river and its branches are in Virginia. The general provisions of the act are similar to those granted by North Carolina, but it is also granted that there may be created a capital stock of \$200,000 in addition to the stock allowed by North Carolina. Moreover, the State was to subscribe \$80,000 to the company on the same terms North Carolina had made a

<sup>4</sup> Laws of Virginia, Act of November 11, 1816.

<sup>5</sup> Preamble to act.

<sup>6</sup> Act of 1816, sec. 1.

subscription—provided the State of North Carolina assented to the act of the Virginia Legislature. The work was to be completed by January 1, 1843, or the charter was to be forfeited.

The Legislature of North Carolina accepted this act of Virginia at once,<sup>7</sup> and later when a slight amendment was made to the charter concerning the general meeting of stockholders, the act closes thus: "This act shall be in force whenever the General Assembly of Virginia shall pass an act to the same purpose and effect."<sup>8</sup>

The company was thus placed in operation in both States. It had chartered privileges for the whole length of the river and its tributaries and large sections of two States were looking to it for important results.

It was not long until the Legislature authorized the subscription on the part of the State for 250 additional shares in the stock of the company and set apart \$250,000 for the purpose on condition that "the said money shall be applicable only to the expense of locking down from the basin at Weldon's orchard into the town."<sup>9</sup> Five years later a resolution was passed by which the State relinquished the right heretofore reserved of taking additional stock in said Company.<sup>10</sup> A statement of the finances of the company a few years later will show what amount had been paid.<sup>11</sup> The report of the treasurer as late as 1884 shows that the State then had 500 shares of stock in the company.<sup>12</sup>

For awhile at least this company showed more life than the Cape Fear Company, for the Board of Internal Improve-

<sup>7</sup> Laws of North Carolina, 1819.

<sup>8</sup> Laws of 1823, ch. 17.

<sup>9</sup> Resolutions, 1828.

<sup>10</sup> Report on Roanoke Nav. Co., 1831.

<sup>11</sup> Report of Treasurer, 1844.

Capital stock .....	\$412,000.00
Amount stock subscribed for by Virginia..	80,000.00
Amount stock paid for by Virginia.....	80,000.00
Amount subscribed for by North Carolina..	50,000.00
Amount paid by North Carolina.....	49,000.00
Amount paid by individuals.....	263,763.00
Net income from tolls.....	1,827.88

<sup>12</sup> Report of Board of Internal Improvements, 1835.

ments speaks of its decidedly increasing trade, while on the other hand there was little material traffic.<sup>13</sup> Legislative action was not so frequent as for the Cape Fear Company. If the company may be judged blessed from the shortness of its annals we may conclude that there was less friction in its management or more success in carrying out its plans of operation.

Just on the eve of the war<sup>14</sup> the company was given permission to discontinue the use of their canal around the Grand Falls of Roanoke river if they saw fit to do so. The company was also authorized to sell all their real estate, water power and other privileges between Gaston and Weldon, the proceeds to be applied to the settlement of debts, if any; if not, it was to be distributed among stockholders. In case the company did not sell, it was to keep the canal in good order. This act closes legislation in regard to this enterprise until after the war.

The one great obstacle in the way of the work of this route was the existence of the Grand Falls of the river. Here within twelve miles the river descends 100 feet. To overcome this fall the Weldon canal was built. The company secured what may be called "sloop passage" as far up as the foot of the falls, a distance of 90 miles from the mouth of the river. By means of sluices on the upper parts of the river boat passage was to be secured almost to the Blue Ridge in Bedford county, Virginia, a distance of 290 miles. One of the branches of the Roanoke, the Staunton, was improved also for about 90 miles above Rock Landing. The river was improved by 1828 up to Salem, Virginia, a distance of 244 miles above the Falls.

The plan was, further, to proceed from the confluence of the Dan and the Staunton up the Dan river to Danville and thence by canal and the improved river into Rockingham and Stokes counties in North Carolina. Sluicing arrange-

<sup>13</sup> Ibid.

<sup>14</sup> Laws of 1858-59, ch. 143.

ments were also extended as far as Leaksville, in North Carolina, 162 miles above Rock Landing.

The size of the undertaking may be judged from the fact that down to November 12, 1827, the total expenditures of capital was \$357,156. For the year following expenditures were \$8276, making a total down to November 5, 1828, of \$365,991.

No matter how well the company may have obviated the difficulties at the falls or how much the river was improved, there was one obstruction that was not to be overcome. This was the lack of outlet to the sea. The natural outlet for the commerce of this river would have been Ocracoke. But this variable and treacherous inlet defied all efforts for permanent improvement. These things kept the Roanoke Navigation Company from reaching the point of utility it might otherwise have reached. Furthermore, Virginia did not fail to use the Swamp canals to draw trade from this rich section to Norfolk.

Steamboats to-day run up the Roanoke to Weldon, and by various canals it is still useful for smaller craft up to the borders of Stokes county, North Carolina, where the river rises. In 1872 the river was placed under Federal Government for improvement.

#### THE TAR RIVER COMPANY

The Tar river, having its sources in the hills of Granville and Person, flows southeastwardly, draining an area of about five thousand square miles. It is navigable below Tarboro, while below Washington it expands into an estuary of considerable breadth, and is there known as Pamlico river.

The story of the improvement of this river is not found so extensively in the State records as in the case of some others. The charter of the company for the improvement of Tar river dates from 1805.<sup>1</sup> Nothing seems to have come

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<sup>1</sup> Laws of 1805, ch. 22.

of this attempt, for in 1816<sup>2</sup> another company was incorporated with a capital stock of \$75,000. The next act was an appropriation of \$3500 in 1825 for removing flats below the town of Washington.<sup>3</sup> The money was to be paid out of the Internal Improvement fund. This was done in the same year in which an appropriation was made for removing flats below Wilmington.<sup>4</sup>

The company seemed to have a short life, for in 1833<sup>5</sup> a resolution was passed directing the superintendent of the Board of Public Works to investigate the accounts of the company, with that of other rivers, and see if the State had not paid more than it had subscribed. Inquiry was also to be made as to what disposition had been made of the funds and whether any remained. If possible it was hoped that part of the State's money might be recovered. A surrender of the charters of the companies was desired and the director of public works was to inquire on what terms the companies would give them up.

The improvement of Tar river was in keeping with the great project that the State was attempting to put in operation by degrees. In every general plan that was presented it plays the same part. In the initial attempt of the Legislature in 1815 this river was ordered surveyed along with the others, and in 1818 this was done. But it was clearly seen that the commerce of the Tar, Neuse and Roanoke were all dependent on Ocracoke inlet, and repeated attempts were made to improve this. These will be discussed in their proper place. In his paper on Internal Improvements, Judge Murphy held that this river must be embraced in any system of improvements.

In the report of the Literary Fund for 1844<sup>6</sup> no mention is made of any stock held by the State in the company, and two years later the company had forfeited its charter,<sup>7</sup> al-

<sup>2</sup> Laws of 1816, ch. 920.

<sup>4</sup> Ibid., ch. 8.

<sup>6</sup> Report of Public Treasurer, 1844.

<sup>7</sup> Governor's Message, 1846-7.

<sup>3</sup> Laws of 1825, ch. 10.

<sup>5</sup> Resolutions of 1833.

though later<sup>8</sup> an appropriation of \$15,000 was made for the improvement of the river. After the war, which is beyond the period of our study, the State still had an interest in the company.<sup>9</sup> In 1876 Pamlico river was placed under improvement by the Federal Government, and three years later the Tar was added.

#### THE NEUSE RIVER COMPANY

Another river, which has its source near that of the Tar, and to which attention was directed, is the Neuse. Rising in Person and Orange counties, it flows past Smithfield and Newbern into Pamlico sound. It is navigable for steam-boats to Smithfield and is about 200 miles in length. At Newbern it is two miles wide and navigable for vessels drawing fourteen feet of water. Here also it is joined by the Trent and below it spreads out to a width of eight miles. Like the Tar it drains about five thousand square miles.

In 1812<sup>1</sup> the Neuse River Navigation Company was incorporated with a capital stock of \$50,000, one-third less than that allowed the Tar River Company at a later date. The proximity of the Neuse to the capital gave rise to the idea that it might be possible to extend the system of inland navigation to a point near Raleigh. In 1831 an examination was ordered made of the river from Smithfield to some point near Raleigh to see if such navigation were possible for a reasonable sum. This idea was not a transient one, for more than a decade later it was urged that since a steam-boat had already ascended the river as far as Smithfield, which is twenty-eight miles from Raleigh, a little work would give permanent steamboat navigation to the immediate vicinity of the capital.<sup>2</sup> This was after railroads had become a reality in North Carolina and the State had taken stock in at least three of them.

<sup>8</sup> Senate Docs., No. 29, 1854-5.

<sup>9</sup> Report of C. L. Harris, Superintendent of Public Works, 1868.

<sup>1</sup> Laws of 1812, ch. 849.

<sup>2</sup> Governor Morehead in message, 1844.

With all these pretensions to greatness the company never amounted to as much as the Cape Fear or Roanoke. It was included in the general indictment of 1833, and may be considered as belonging to that number of companies whose charters had expired by *non-user*. In 1834 it was said that the company had long since ceased to act as a corporation and that there was no disposition to revive its existence.<sup>3</sup> A new company was organized in 1850, to which the State subscribed \$40,000.<sup>4</sup> The State still had an interest in it after the war. It was placed under the Federal Government in 1878.

#### OTHER RIVERS

The four rivers discussed above may be considered the most important, but the efforts of the State did not stop with them. Most of the companies organized for the improvement of these various rivers were at first private corporations. There were, however, but few that did not at some time receive State aid. At an early date commissioners were appointed to have the various rivers staked.<sup>1</sup>

Before the beginning of the new century a company had been incorporated to open the navigation of the Catawba river. The shares of the capital stock were to be free from tax for 99 years. The company might charge tolls and build roads on either side of the river. The charter was amended slightly in 1816. Doubt arose as to the practicability of the enterprise and investigation was made into the workings of this company as well as of the other rivers. It also forfeited its charter by *non-user*.

The Yadkin River Company was incorporated in 1816.<sup>2</sup> The State subscribed for two hundred shares. The charter was to go into effect when adopted by Congress. The State put other money into the company, but does not seem to

<sup>3</sup> Report of Superintendent of Public Works, 1836.

<sup>4</sup> Wheeler's History of North Carolina, p. 136.

<sup>1</sup> See Judge Murphy's Memorial.

<sup>2</sup> Laws of North Carolina, ch. 93.

have been satisfied with the way in which the affairs of the company were conducted. A resolution in 1828 instructed the Board of Internal Improvement to call on the Yadkin Company to know what disposition had been made of the \$25,000 which the State had subscribed.<sup>3</sup> It was also included in the investigations of 1833.<sup>4</sup> The result does not seem to have been very satisfactory, since the Superintendent of Public Works declared that more money had been spent on this river than any other except the Roanoke and the Cape Fear and without benefit to the State.<sup>5</sup> A railroad built from Fayetteville to the narrows of the river might, it was thought, make the river above of some service. It was also later proposed to connect the river with the Cape Fear by means of a canal so as to facilitate the transportation of produce from Western North Carolina to a good market.<sup>6</sup> The same years commissioners were authorized to open books for \$300,000 to improve the river.<sup>7</sup> Still another attempt at improvement was recommended in 1854.<sup>8</sup> In 1868 the State still owned stock in the company.<sup>9</sup>

Other efforts made at improvement will only be mentioned. An act was passed in 1805 for improving Rockfish creek and Little river.<sup>10</sup> A year later a similar act passed for the navigation of Waggamaw river.<sup>11</sup> In 1816 the New River Canal Company was incorporated with a capital stock of \$20,000,<sup>12</sup> and as late as 1854 it was recommended that \$20,000 be appropriated for the improvement of this river.<sup>13</sup> In 1820 attention was directed to Broad river in Rutherford county near the mountains and \$5000 appropriated for its improvement.<sup>14</sup> In 1850 acts were passed for the improvement of Haw river and others.<sup>15</sup>

<sup>3</sup> Resolutions, 1828.

<sup>4</sup> Resolutions, 1833.

<sup>5</sup> Report Superintendent of Public Works, 1834.

<sup>7</sup> Ibid., ch. 76.

<sup>6</sup> Laws of North Carolina, 1846, ch. 17.

<sup>8</sup> Senate Document No. 29, 1854.

<sup>9</sup> Report of Superintendent of Public Works, November, 1868.

<sup>10</sup> Laws of North Carolina, 1865, ch. 24.

<sup>11</sup> Ibid., 1806, ch. 22.

<sup>12</sup> Ibid., 1816, ch. 919.

<sup>13</sup> Senate Documents, No. 29, 1854.

<sup>14</sup> Laws of North Carolina, 1820, ch. 1072.

<sup>15</sup> Ibid., 1850, ch. 91.

The list of creeks demanding excavation was large. Between the years 1817 and 1821 the State put \$113,099 into the improvement of its rivers. Many of them deserve attention. On some the work was wasted and it is doubtful if any ever fully repaid the amount invested in them. They are still items of heavy expense in the river and harbor appropriation bills of the General Government, and the end is not yet.

## CHAPTER II

### CANALS

North Carolina had other improvements in view beside the work to be done on her rivers, for these did not reach all parts of the State. In all the plans drawn up there were suggestions as to the connecting of the rivers by means of navigable canals. This kind of work was rendered easier in the eastern section by the level condition of the land. It may have been this fact that led to efforts in this direction having been made so early. Thirty-five years before the Erie canal was completed and eighteen before the opening of the Middlesex in New England, North Carolina chartered a canal that has been in use for over a century. This was the Dismal Swamp Canal, incorporated in 1790. Five years after this incorporation, an act was passed "to encourage the cutting of canals by subscription." The objects to be gained by such work were several. In the first place these canals would facilitate trade and travel by making shorter and safer conveyances. Then they would to a large extent be located in that section of the State that needed draining in order to render it fit for habitation, thus they would at the same time promote health and reclaim large tracts of very fertile land which was otherwise unfit for cultivation.

The act referred to above gave permission to any company desiring to cut a canal to use the necessary land. The canals were to be rented out until the cost and interest had been paid, when they were to become free for the public. Each company was given seven years from the time it secured its order from the county court in which to complete the work.

## THE DISMAL SWAMP CANAL

The most important act passed by the Legislature at its session of 1790 was the incorporation of this company. The honor of being the originators of the bill has been ascribed to Joseph and Benjamin Jones, of Pasquotank county.<sup>1</sup>

As is well known the Great Dismal Swamp lies partly in Virginia and partly in North Carolina in that corner of the two States below Norfolk. The history of the movement to penetrate this swamp by some means for opening navigation may be said to have had its definite origin in 1786, when two men from Virginia and three from North Carolina met in Fayetteville, North Carolina, and came to an agreement respecting the coöperation of the two States in regard to the matter. General Washington, who had visited the swamp and penetrated to Lake Drummond, said the scheme was feasible and showed his faith in the plan by becoming a stockholder to the amount of \$500.

The object of the canal was to connect Pasquotank river in North Carolina, flowing into Albemarle sound, with Elizabeth river in Virginia. Eighty thousand dollars was deemed to be sufficient capital stock for the enterprise at first,<sup>2</sup> but in 1825 the company was authorized to increase its shares to such an amount as was necessary to complete the work.<sup>3</sup> The company was allowed to connect with Lake Drummond by means of a cross canal; the waters of the lake as a source of supply were vested in the company.<sup>4</sup> The property of the company was to be free from taxes, and tolls were to be levied according to a fixed rate. The idea of drainage was not lost sight of, and owners of adjacent lands that were in need of drainage might cut cross ditches into the main canal for this purpose.<sup>5</sup>

The canal itself was to be 32 feet wide and 8 feet deep below the surface of the earth and in dry seasons capable of

<sup>1</sup> Moore's History, vol. i, p. 401.

<sup>2</sup> Laws of North Carolina, 1790.

<sup>4</sup> Act of 1790, sec. 12.

<sup>3</sup> Ibid., 1825.

<sup>5</sup> Ibid., sec. 14.

being navigated by vessels drawing three feet of water. From the character of the country through which the canal passed it was easy to secure enough water for the flatboats that passed through it. In very dry seasons an abundant supply could be gotten from Lake Drummond, which was only  $3\frac{1}{4}$  miles from the route of the canal. Locks were to be 90 feet in length and 32 in breadth and capable of conveying vessels drawing four feet of water.<sup>8</sup> These provisions were afterward so changed as to make the canal the width necessary for vessels only fifteen feet broad.<sup>9</sup> In accordance with this act the directors altered the canal to a width of 24 feet and a depth of 6 feet.

The agreement of the commissioners who met in Fayetteville in 1786<sup>10</sup> was confirmed. By this compact Virginia declared that the waters of Elizabeth river from the canal to the mouth, the waters of Hampton Roads, of Chesapeake bay to the capes and of that part of the Roanoke river lying in Virginia should be free forever for vessels belonging to citizens of the State of North Carolina. On the other hand North Carolina made a similar agreement in regard to the Roanoke, Meherrin, Nottoway, Chawan, and Albemarle sound.<sup>11</sup>

Work was soon begun and it was hoped that it could be completed in ten years,<sup>12</sup> but when the time was almost out it had to be extended five years more.<sup>13</sup> It soon seemed probable that other outlets would be necessary for the canal, on account of the increased trade expected from the improved condition of the work. Consequently the Virginia

<sup>8</sup> Act of 1790, sec. 18.

<sup>7</sup> Laws of 1792, ch. 373. This act was in confirmation of one by Virginia in 1790.

<sup>8</sup> The commissioners were, for Virginia: Robert Andrews and John Cooper; for North Carolina: William McKenzie, James Galloway and John Stokes.

<sup>9</sup> Repealed—Laws of 1792, ch. 373, sec. 2. Every part of the act “concerning the regulation of commerce so far as the same is now invested in the Government of the United States shall be, and the same are hereby repealed.”

<sup>10</sup> Act of 1790, sec. 19.

<sup>11</sup> Act of 1799, sec. 1.

Legislature gave permission to the company to clear out Northwest river from its junction with the canal, or to cut another canal to any point on the river.<sup>12</sup> Further permission was given the company to form necessary outlets in order to render it of general utility.

The State was determined that no obstacle should stand in the way of the successful operation of the canal. It was made to be used and nothing should prevent its being used. The counties of Camden and Pasquotank erected a bridge over the canal, but the Legislature ordered that a draw be placed in the structure at the expense of the State, in order that masted vessels could freely use the route. In case of a failure to have the bridge so built, the sheriffs of the counties were to have it removed.<sup>13</sup>

When Gallatin brought forward his scheme for internal navigation he called attention to this canal as of possible utility. It was not the shortest route from the Chesapeake to the Albemarle, but it was the most easily available. Furthermore, a large part of the work had been done. The difficulty lay in the size of the canal as it then existed. At that time the only boats that navigated it were flats forty feet long and six wide, which drew about two feet of water. These were used in carrying shingles—about 8000 at a load.

Part of the work had been done by contract at a rate of \$4000 per mile. The rest had been done by negro labor with an overseer. The latter system was found to be much cheaper than contract labor and the work was done much better. Up to 1807 about \$100,000 had been expended, of which Virginia furnished \$17,500. It was then estimated that \$25,000 would complete the work and pay all outstanding obligations. In the same year the company possessed six negro slaves. With an overseer, these were thought to be enough to keep the works in order when they were once completed. Two clerks were necessary to collect tolls

<sup>12</sup> Act of Virginia, 1818. This act was confirmed by North Carolina in 1825, ch. 33.

<sup>13</sup> Laws of North Carolina, 1828.

and these would bring the total expenses of the Company for a year to about \$1500. The company also built a saw and grist mill that for some time brought in \$600 to \$800 per year.

On the west bank of the canal, along its whole length, a road was built. This road was 18 feet wide and was made from the mud and clay thrown up out of the canal. The company had the right to charge tolls for passage over this road.<sup>14</sup>

If this canal were to become of material importance it would need to be widened and deepened so as to allow vessels which navigated Albemarle sound to pass through it. In spite of the fact that so much work had already been done in clearing out rocks and stumps, Gallatin made the following estimate of cost for improving the canal so as to make it correspond to the plan of the Chesapeake and Delaware canal:

Widening, deepening and securing a uniform level—\$8000 per mile .....	\$176,000.00
Four stone locks .....	40,000.00
Canal to Lake Drummond, etc.....	34,000.00
<hr/>	
Total.....	\$250,000.00

To Gallatin the Dismal Swamp Canal was of more importance than it has ever been considered since. It had a good local patronage, but it has never commanded extensive coastwise trade. It was devised as a local enterprise, at first, very probably, in order to get the fine timber of the

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<sup>14</sup> The following tolls were charged for the use of the road: carts, 25c; wagons, 50c; four-wheel carriages, 50c; two-wheel carriages, 25c; man and horse, 12½c; every head of cattle, 6c; hogs and sheep, 2c each.

The following rates of toll were charged for the passage of freight through the canals: shingles—18 and 22-inch, 25c per thousand; 24-inch, 33c per thousand; 36-inch, 5c per thousand; barrel staves, 50c per thousand; hogshead staves, 75c per thousand; pipe staves, \$1.00 per thousand; timber or logs, 6c each; wood, 25c per cord; boards, 50c per thousand; 1-inch plank, 50c per thousand; 2-inch plank, 75c per thousand.

swamp region, and later was adapted for the purposes of local traffic. It only became of national importance in connection with the scheme for continuous inland navigation along the whole coast.<sup>15</sup>

It was thought that the Pasquotank river was too difficult for the navigation of Albemarle vessels, and an attempt was made to open communication with the Chowan, which united with the Roanoke.<sup>16</sup> This route would have begun at Suffolk on the Nansemond river and would have skirted the western edge of the swamp to Bennett's creek, a branch of the Chowan. A company was incorporated for this purpose but the capital was never taken. So much work had already been done on the original route that it was thought best to continue that.

Thus for nearly a century the Dismal Swamp canal has afforded connection between the sections of two States. It performed the work for which it was originally intended until more efficient means of communication supplemented it. Its later history and recent developments in connection with it fall outside the period of our study.

#### OTHER CANALS

When John Stevens threatened to establish steamer lines in spite of the monopoly that had been given to Livingston and Fulton he secured a grant from North Carolina of the exclusive right to navigate the waters of the State. The

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<sup>15</sup> Industrial Resources, etc., of Southern and Western States, by J. D. B. De Bow, 1853.

That it was used for local trade may be seen from the following table of freight that passed through it from North Carolina to Norfolk from October 1, 1846, to July 31, 1847: Building shingles, 20,753,350; 2-foot shingles, 732,390; 3-foot shingles, 874,310; total, 23,360,050. Hogshead staves, 4,881,640; barrel staves, 284,520; pipe staves, 90,090; total, 5,256,350. Cubic feet of plank and scantling, 139,100; cubic feet of timber, 43,685; bales of cotton, 3,722; barrels of fish, 47,386; barrels of naval stores, 30,505; barrels of spirits of turpentine, 686; kegs of lard, 1,299; bushels of corn, 12,610,099; bushels of wheat, 26,225; bushels of peas, 21,956.

<sup>16</sup> American State Papers, vol. xx; Miscellaneous, vol. i, p. 763.

other company gave warning that his grant was illegal and proposed, as an offset to his schemes, to establish three lines in the South.<sup>17</sup> One was to run from Elizabeth City to Newbern; another, from Beaufort to Wilmington, and a third from Wilmington to Charleston. Every share of stock in the companies was taken by 1813.<sup>18</sup>

One of the passages which was to be used in accordance with this scheme was the Clubfoot and Harlow's Creek Canal.<sup>19</sup> This canal, which still exists, was first planned on a small scale in 1797.<sup>20</sup> In 1819, with a new charter, it was again attempted, but funds were too small, the State loan being inadequate. In 1826 the State made a loan of \$12,000 out of the Internal Improvement Fund, in order that the Company might complete the canal.<sup>21</sup> The company was to pay one-half the loan back in ten years and the other in fifteen years. In the meantime the canal and other works of the company were to be given as security and the company was required to give bond that the loan should be applied to the liquidation of bona fide debts and to the completion of the route. In 1828 the State made an additional loan of \$6000 for the completion of the work and the improvement of the part already begun.<sup>22</sup> By an act of 1820 the dividends arising from stock held by the State were to be applied to a fund for common schools.<sup>23</sup> But these dividends were not forthcoming to any considerable amount. There was a gradual yearly diminution of tolls due to increasing obstacles to navigation until the canal was practically worthless, and by 1834 it was thought that even if it were opened again the trade would not reimburse the State for its loan.<sup>24</sup>

<sup>17</sup> McMaster: *History United States*, vol. iv, p. 400.

<sup>18</sup> Ibid., vol. iv, p. 401.

<sup>19</sup> Centennial address, by K. P. Battle, Raleigh, October 12, 1892.

<sup>20</sup> Report of Superintendent of Public Works, 1834.

<sup>21</sup> Laws of North Carolina, 1822, ch. 24.   <sup>22</sup> Ibid., 1828, ch. 37.

<sup>23</sup> Laws of North Carolina, 1825, ch. 1.

<sup>24</sup> Report of Superintendent of Public Works, 1834. From December 3, 1827, to December 31, 1828, the gross amount of tolls was \$640.23; while from January 2, 1833, to December 31, 1834, they were only \$294.49. The whole amount from July, 1827, to December 31, 1833, was \$2722.05.

By 1834 the tolls had decreased to \$210.51, and it was estimated that three or four thousand dollars would have to be spent on the canal to keep it from soon becoming unfit for use.<sup>25</sup> By 1844 the literary fund of the State held shares of stock in the company to the amount of \$15,000,<sup>26</sup> and the same year, the loans made by the State not having been repaid, foreclosure was ordered.<sup>27</sup> After the war the State still held its stock in the company, and the canal still furnishes passage for small vessels.

These two are the most important of the canal projects favored by North Carolina. There were several other schemes, but they, for the most part, had in view the connecting of some of the important rivers in order to furnish transportation routes for the country between water courses. These did not often materialize and the building of railroads put a stop to all such undertakings.

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<sup>25</sup> Report of stockholders, December 4, 1834.

<sup>26</sup> Treasurer's Report, 1844.

<sup>27</sup> Resolutions, 1844.

## CHAPTER III

### RAILROADS

The coming of the railroads into North Carolina opened a new phase in the question of internal improvements. It did not, it is true, at once suspend all plans for other kinds of public service. The idea of water transportation was too firmly fixed to be suddenly uprooted. Then, too, no one dreamed that the State would ever be crossed in so many directions by railroads. We have seen how President Caldwell's plan for a great central railway was never put into effect exactly as he planned it, and it was years before it was realized in any degree at all. In fact, it is only very recently that connections have been completed from Beaufort to Murphy. It was about two years after President Caldwell had proposed his scheme that the first railroad was incorporated, and this was only a charter confirming one already granted by the State of Virginia for the Petersburg Railroad.

The act of the State of Virginia<sup>1</sup> authorized \$400,000 capital stock for a road to run from Petersburg to some point on the North Carolina line.<sup>2</sup> The point in North Carolina which was specified by the confirming act of the Legislature of North Carolina was "on the north side of the Roanoke river, where it first strikes the bank of the said river at a point not above the town of Weldon, nor below the town of Halifax," nor was the company "under any pretense whatever to extend the line of their road beyond the said point."<sup>3</sup>

The act also specified the rates to be charged. As soon as any part of the road was completed, the company was al-

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<sup>1</sup> Passed February 10, 1830; see N. C. Laws, 1830, ch. lvi.

<sup>2</sup> Act 1830, sec. 1.

<sup>3</sup> Act of North Carolina, 1830, sec. 5.

lowed to charge  $12\frac{1}{2}$  cents per mile per ton of produce and other commodities. When the whole was completed, they might charge \$8 per ton for the whole length of the road, "until the net profits received shall amount to a sum equal to the capital stock expended, with six per centum interest thereon from the time the money was advanced by the stock-holders until received back in the net profits."<sup>4</sup> After such a sum had been collected, the rates were to be fixed and regulated by the Board of Public Works so that the road could earn six per cent on capital stock above running expenses. The charter of the road was to run sixty years, according to the act by North Carolina.<sup>5</sup> Three years after incorporation, the road was authorized "to construct a lateral railroad, from the point at which their present line of railroad may be crossed by the Portsmouth & Roanoke Railroad, or from such point in the neighborhood of same . . . to the basin at Weldon."<sup>6</sup>

The charter of this road was soon followed by the incorporation of others. Many of these did not materialize, while some have been in active operation ever since, and have contributed much to the opening up of the State. Of some of these roads, it will be best to give an extended account; of others, the mention of incorporation will be sufficient, while some must be allowed to rest undisturbed on the pages of the Acts of the General Assembly of North Carolina.

In the same year in which the Petersburg road was incorporated, a charter was granted by the Legislature of North Carolina to the "Fayetteville Railroad Company," which was to run from Fayetteville to Campbellton on the Cape

<sup>4</sup> Act of Virginia, sec. 18.

<sup>5</sup> North Carolina Act, sec. 10.

<sup>6</sup> Laws of 1833, ch. 80; see Railroad Commission's Reports. It will not be out of place to complete the history of this road. Its charter expired in 1891, and was renewed for two years on March 9th of that year. At the expiration of this time, it was at first refused a new charter, because the Wilmington & Weldon Company had leased it, and claimed that its exemptions extended to all its branch lines. The question was settled, and the charter was renewed March 1, 1893.

Fear.<sup>7</sup> The capital stock of the company was to be only \$20,000, and the books were to be opened by the commissioners of the town of Fayetteville. These officials were also empowered to subscribe for stock in the road, provided it was so authorized by the voters of the town. To pay for the shares thus subscribed, the commissioners were authorized to levy a tax of not more than 25 cents on every poll, and 25 cents on every hundred dollars' worth of town lots and improvements. Or they might make a loan, for which they could issue scrip bearing 6 per cent. This act had but little importance, but was the first road incorporated exclusively by the State of North Carolina.

In 1833, "Doyle O. Hanilan and his associates" were authorized to build a road between the points mentioned in the original charter.<sup>8</sup> Whenever the State of North Carolina, or any company, should build a road westward from Fayetteville, they were authorized to connect with this road. When twenty miles should be completed, the road might be sold to the State or to a legally authorized company, the buyers to pay the owners the capital invested and ten per cent interest.

At the session of 1831-32 the following incorporations were made:

The Cape Fear and Yadkin Railroad Company,<sup>9</sup> which was chartered with a capital of \$2,000,000, and was to run from Fayetteville to the Yadkin river, and thence by Salisbury to the Catawba river. In addition to this, the company was to be allowed to construct canals when necessary.

In the same year a company was chartered, which was to be known as the North Carolina Central Railroad Company, with a capital of \$2,000,000.<sup>10</sup> The line conformed pretty closely to that suggested by President Caldwell. Possibly the enterprise may have been the result of his efforts. The

<sup>7</sup> Laws of North Carolina, 1830, ch. cvii.

<sup>8</sup> Ibid., 1833, ch. lxxiii.

<sup>9</sup> Ibid., 1831-32, ch. 1.

<sup>10</sup> Ibid., 1832-33, ch. li.

company was granted the right to run a line of communication by railroad, or railroad and canal, from, at, or near Beaufort by Newbern and Raleigh, and thence through the central part of the State. The rates of toll which the company was allowed to charge were four cents per ton per mile on goods—merchandise, produce, etc.—and eight cents per ton per mile for transportation. Passengers were to be carried at a rate not exceeding six cents per mile for each passenger. Corporate powers were granted the company for a period of ninety years.

This was an attempt to build a road on a great scale entirely by private subscription. It did not succeed. It was several years before the road through the center of the State became a reality, and then it was by liberal State aid.

The Legislature directed that the Board of Internal Improvements or the Governor should have made a survey for the routes of the Central and Cape Fear and Yadkin companies. The sum to be spent on each survey was not to exceed \$4000, and the State was to have stock equal to the amount spent.<sup>11</sup>

Another road of this same year was the "Tarborough and Hamilton." It was of local importance, with a capital stock of only \$60,000.<sup>12</sup> This act was revived in 1835.<sup>13</sup>

In the next year there was chartered a company under the very curious name of "The Experimental Railroad Company."<sup>14</sup> It was to be located in Wake county, and it was given a charter for twenty years. Its character is revealed in the section which provided that the company should not charge more than two-thirds the price charged by wagons for the transportation of rock for use in the erection of any public State building. The road was to convey the building material for the new State Capitol.

One other incorporation of this year demands attention. This was the act which, with alterations, gave force to an

<sup>11</sup> Laws of North Carolina, 1831, ch. 37.   <sup>12</sup> Ibid., 1831, ch. cxlvii.  
<sup>13</sup> Ibid., 1835, ch. xxxi.   <sup>14</sup> Ibid., 1832, ch. lx.

act by the Virginia Legislature, by which the Portsmouth and Roanoke Railroad was incorporated.<sup>15</sup> This road was to run from the town of Portsmouth to some point on the Roanoke river. The capital stock of the company was \$400,000, and the charter was to run for sixty years. In ratifying the act by the Virginia Assembly, the Legislature of North Carolina refused to give its consent to the elaborate method which the act adopted for giving the road the right of eminent domain. The North Carolina act provides for the company's obtaining land on which to run the road by means of a jury, which should lay off the road and assess the damages.

The road was to end on the bank of the river opposite Weldon, but the next year the company was empowered to extend the road across the Weldon toll bridge to the basin of the canal in Weldon.<sup>16</sup> This amending act curiously provides also that the company may carry the mails and passengers, and that it will not be incumbent on the road to stop for passengers to get off at any but regular stopping places.

In 1847 a new act of incorporation changed the Portsmouth and Roanoke to the Roanoke Railroad Company.<sup>17</sup> In 1848 the Seaboard and Roanoke, which had been incorporated by Virginia in 1847, was united to the Roanoke by an act of the same State. In 1849 the union was ratified by an act of the North Carolina Assembly.

There were nine new railroad companies incorporated by the Legislature of 1833, and several amending acts passed. Some of them are worthy of notice. One of these was the Fayetteville and Western Railroad,<sup>18</sup> or rather, as it was first incorporated, the Cape Fear, Yadkin and Peegee R. R. Co.<sup>19</sup> The capital stock was \$500,000, and the road was to start at Fayetteville and run to the Yadkin river at the Narrows "in

<sup>15</sup> Ibid., 1832, ch. xxv. The Virginia act was passed March 8, 1832.

<sup>16</sup> Laws of North Carolina, 1833, ch. lxxix. <sup>17</sup> Ibid., 1847, ch. 87.

<sup>18</sup> This name was authorized by Legislature in 1836.

<sup>19</sup> Laws of North Carolina, 1833, ch. lxxii.

a line leading in the direction of Wilkesbrough." The company was also to build a lateral line connecting the original line with the Peegee, and penetrating Mecklenburg and Lincoln counties. Also, they might extend another road into Randolph county by Asheboro. The company had the right to double its capital if necessary, and the State was to be allowed to subscribe two-fifths of the capital stock. In 1836 the capital stock was increased to \$2,000,000, and the road was authorized to connect with the Charleston & Cincinnati road. It was also provided that in case the N. C. Central R. R. Co. should decide to intersect with the Fayetteville & Western, the latter should give preference in transportation to all commodities brought to it by the N. C. Central. The time limit of the corporation was placed at ninety years.

In 1836 the State agreed to subscribe two-fifths of the stock of the road, when three-fifths had been subscribed, and one-fourth had been paid in.<sup>20</sup> The Board of Internal Improvements was to appoint two-fifths of the directors of the company. By a subsequent act, the Board of Internal Improvements was authorized to subscribe on behalf of the State three-fifths of the stock when the other two-fifths had been paid in.<sup>21</sup> The first payment was to be made as soon as work was begun, and of the rest, one-fourth was to be paid every six months until all was paid. The Cherokee bonds and surplus revenue were to be used to meet the instalments, and in case of failure of these, the Board of Internal Improvements was to borrow \$500,000. Immediately after the incorporation of this road, commissioners were appointed, who were authorized to raise \$50,000 by means of a lottery. This they were to invest in the company in the name of the town of Fayetteville.<sup>22</sup> The road finally failed for lack of funds.

Another road chartered this same year was the Greenville and Roanoke.<sup>23</sup> This road was chartered with a capital of

<sup>20</sup> Ibid., 1836, ch. xxii.

<sup>22</sup> Resolutions, 1833.

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<sup>21</sup> Ibid., 1838, ch. xxvii.

<sup>23</sup> Laws of North Carolina, 1833, ch. lxxiv.

\$150,000, for the purpose of connecting the Petersburg road, at some point in Greenville county, Va., with the Roanoke river in Northampton county, N. C. After paying the expense of buildings, etc., the tolls were to be so regulated as to pay ten per cent dividends. The company was incorporated for ninety years, and the State promised that no future connections should be made to the injury of the road. In 1852, the union of the Greenville and Roanoke road with the Petersburg road was authorized.

Still another road incorporated in 1833 was the Halifax and Weldon.<sup>24</sup> This was a short road, with a capital stock of \$50,000, to run from Halifax to Weldon, both in the county of Halifax. The dividends that were to be allowed on this road were fifteen per cent. In 1836 the company was allowed to add \$10,000 to its capital stock. In the same year permission was granted the stockholders to subscribe their stock upon the books of the Wilmington and Raleigh Road, on terms agreeable to the two companies. The property held by the Halifax and Weldon should then pass into the hands of the latter road. By this act, the Halifax and Weldon was to pass out of existence.

In the same year also the Wilmington and Raleigh was incorporated,<sup>25</sup> which, as has just been noted, absorbed the Halifax and Weldon road. As the name implies, this road was to run from Wilmington to Raleigh. The connection thus established would be one of greatest importance, connecting, as it did, the capital of the State with the chief coast town. It was a project long dreamed of. The capital stock was to be \$800,000, with the privilege of increasing it to \$1,000,000, if branch roads were considered necessary by the company. Work was to begin on the road within three years, and the main line was required to be completed within twelve years, otherwise the charter would be forfeited. An amending act, two years later, gave the company the privilege of increasing the stock to \$1,500,000.<sup>26</sup> The act fur-

<sup>24</sup> Ibid., 1833, ch. lxxv.

<sup>25</sup> Ibid., 1835, ch. xxx.

<sup>26</sup> Ibid., 1833, ch. lxxviii.

thermore gave the stockholders the right to run the road to the Roanoke river, instead of Raleigh.<sup>27</sup> This was done with a view to making connection with the Petersburg and Norfolk road. The company was also given the right to run boats between Wilmington and Charleston.<sup>28</sup>

The same act which gave aid to the Fayetteville and Western made the same terms to the N. C. Central and the Wilmington and Raleigh.<sup>29</sup>

The State was to subscribe two-fifths of stock when the remainder was assured. The terms of payment were the same as those granted the Fayetteville and Western. The difference is that as the latter was not built the State was not held to its promise, but it was obliged to carry out the contract in regard to the Wilmington and Raleigh.

In 1840 the road was allowed to issue bonds to the amount of \$300,000, and the credit of the State was pledged for the payment of the interest.<sup>30</sup> The State was to have a mortgage on the road, and in case of a failure of the company to pay its bonds, the mortgage was to be good for them.

In 1844 the State held, for the literary fund, \$137,000 of the bonds of the Wilmington and Raleigh, besides 6000 shares of stock in the same.<sup>31</sup>

When the road was completed in 1840 it had come to be known as the Wilmington and Weldon, since it had been diverted from the original plan of running to Raleigh. It was then one hundred and forty-six miles in length, and "was then one of the longest roads on the continent, and, indeed, was longer than any at that date in Europe."<sup>32</sup>

In 1852 the State received \$12,000 as its share of the dividend paid by the road. The road was then paying six per cent on stock,<sup>33</sup> and also in 1854.<sup>34</sup> In 1855 the State received \$28,000 from the road, and the two following years it

<sup>27</sup> Ibid., 1835, ch. xxx, sec. 2.

<sup>28</sup> Ibid., 1835, ch. xxx, sec. 4.

<sup>29</sup> Ibid., 1836, ch. 22.

<sup>30</sup> Ibid., 1840, ch. I.

<sup>31</sup> Report of Public Treasurer, 1844.

<sup>32</sup> North Carolina and its Resources, issued by State Board of Agriculture, 1896, p. 213.

<sup>33</sup> Treasurer's Report, 1852. <sup>34</sup> Senate Documents, No. 29, 1854.

received the same amount, besides the interest on the bonds held by the State, which amounted to \$6270, in 1857. In 1858 dividends amounted to \$26,000, and interest on the bonds to \$3135 for the literary fund, and \$3000 to the public fund.<sup>35</sup> In 1860 dividends from the road amounted to \$210,-632.<sup>36</sup>

To epitomize the early history of the road: It was incorporated in 1833; work was begun 1836, and it was completed 1840. The State took \$600,000 stock, and in 1840 endorsed the bonds of the company to the amount of \$300,000. Repairs to the road in 1850 raised the cost of the road to another million.

Mention must also be made of the "Roanoke and Raleigh" Company, which was incorporated with a stock of \$600,000, to connect Weldon or Halifax with the capital city, by means of a railroad, or by railroad and canals.<sup>37</sup>

Another road incorporated was the "N. C. Centre and Seaport Railroad Company," which was to run from Beaufort to Raleigh, or to a point where it should intersect the Wilmington and Raleigh.<sup>38</sup> The capital stock was \$1,000,000. This was another effort to secure connections with the coast for Raleigh.

This year of 1833 may be considered the year in which began the great era of attempted railroad building in North Carolina. None of the roads of that day have figured much in the history of the State, except, perhaps, the Wilmington and Raleigh, or, as it was later called, the Wilmington and Weldon. From this time on, it will only be possible to consider the most important roads that were chartered.

One of the roads incorporated in 1835 was the "Roanoke, Danville and Junction Company."<sup>39</sup> This road was incorporated with a capital stock of \$2,000,000, and its purpose was to make a railroad "from a point intersecting the Peters-

<sup>35</sup> Comptroller's Statement, 1855, 1856, 1857, 1858.

<sup>36</sup> Governor's Message, 1860.

<sup>37</sup> Laws of North Carolina, 1833, ch. lxxvi.

<sup>38</sup> Ibid., 1833, ch. lxxvii.

<sup>39</sup> Ibid., 1835, ch. xxix.

burg and Roanoke, the Portsmouth and Roanoke, and the Greenville and Roanoke Railroads; or to such other points on either side of the Roanoke river as may best secure to the proposed route all the advantages of said roads through Danville, to some point within or near the town of Evansham," in Wythe county, Va., and from this point to the Tennessee line.

The same year was incorporated the "Cincinnati and Charleston Railroad Company."<sup>40</sup> Its purpose is revealed in its name. A connection was to be established between the cities of Cincinnati and Charleston by a road passing from South Carolina through North Carolina, Tennessee and Kentucky into Ohio. The capital stock was to consist of sixty thousand shares of one hundred dollars each. The company was to build "a railroad, with one or more tracks, to be used with steam, animal, or any other power," as speedily as possible. The stock, dividends, and property of the company were to be forever exempt from taxation. By an amending act in 1836 it was provided that the road was to pass up the valley of the French Broad, and cross the Blue Ridge into Rutherford county, N. C.

This road was known in Kentucky by the name of "The Louisville, Cincinnati and Charleston," and this name was adopted by North Carolina in 1836. The act which changed the name also conferred banking privileges on the road.<sup>41</sup> Its stockholders were to organize under the name of the "Southwestern Railroad Bank," but were to be a separate body politic. Each stockholder, and every person who became one until the stock of the road was increased to \$12,000,000, should be entitled to a \$50 share in the bank for every share of \$100 held in the railroad company. Thus, the capital of the bank would amount in the first instance to \$6,000,000. The capital and officers of the bank and road were to be separate; the banks was not to be liable for the road, but the road was liable for the bank in case of failure. Each share

<sup>40</sup> *Ibid.*, 1835, ch. xxvi.

<sup>41</sup> *Ibid.*, 1836, ch. ii.

of stock in the bank was inseparably connected with a share in the railroad company. The principal bank was to be located in Charleston, but permission was given to locate a branch in North Carolina.

Other roads incorporated this same year were the "Raleigh and Fayetteville," with a stock of \$8,000,000,<sup>42</sup> and the "Milton and Salisbury," with a stock of \$500,000.<sup>43</sup> But the act of greatest importance this year, in fact, more important than any incorporation which had taken place up to this time, was that which gave birth to the road which was known as the "Raleigh and Gaston Railroad."<sup>44</sup> This road was to effect communication between the city of Raleigh and the termination of the Greenville & Roanoke road at or near Gaston, formerly called Wilkins' Ferry. For this purpose a capital stock of \$800,000 was authorized, with the privilege of increasing to \$1,000,000. The grant was made for a term of ninety years. A curious provision declares that the company "shall give no undue preference in transportation to the property of one person over that of another, but as far as practicable shall carry each in the order of time in which it shall be delivered or offered for transportation."

This was the origin of this company, but this charter by no means tells the story of the road. In a short time an act had to be passed for the relief of the road. A memorial from the road asked that the State either take \$500,000 stock, or loan its credit. The Senate committee on the subject reported that they considered it a good investment, and accordingly an act was passed for this purpose. This act allowed the company to execute bonds to the amount of \$500,000.<sup>45</sup> The faith of the State was pledged for the semi-annual payment of interest at six per cent. The principal was also guaranteed by the State. This debt was not redeemed before January 1, 1860. The State was to hold a mortgage on all the property of the road in order to secure

<sup>42</sup> *Ibid.*, 1835, ch. xxvii.

<sup>44</sup> *Ibid.*, 1835, ch. xxv.

<sup>43</sup> *Ibid.*, 1835, ch. xxviii.

<sup>45</sup> *Ibid.*, 1838, ch. xxix.

it against the payment of the bonds. If the bonds were not paid after 1861, the mortgage was to be foreclosed.

It was further provided that any time within seven years after the completion of the road, the State, if it chose, could take stock to the amount of five thousand shares, which should be a full equivalent for the liability of the State for the bonds, and the mortgage should be surrendered. Power was also granted to increase the capital to \$1,500,000. "If by reason of any loans of money obtained in Europe or elsewhere," the amount of bonds authorized should be more than sufficient, the company was to surrender to the State Treasurer the unnecessary bonds.

The State soon could congratulate itself on the completion of two railroads, the completion of its capitol building, and the prospect of reclaiming the swamp lands, and the prospect of a public school system.<sup>46</sup> All seemed to point to a new era. The one drawback was the fact that the railroads were in debt.<sup>47</sup> Within a few years the literary fund of the State held \$165,300 in bonds of the Raleigh & Gaston, and five hundred shares of stock. It was seen that the union of the Wilmington and Weldon and the Raleigh and Gaston was of vital importance to the success of both.<sup>48</sup> The truth of the matter is that the question of railroads had gotten into politics. There were some who proclaimed that the railroads were the tools of the rich,<sup>49</sup> and with such a doctrine it was easy to stir up prejudice against the incorporation of new roads. The lines already run had not met the great expectations that had been roused by the inauguration of the system. By some it was declared that the State had aided various companies, but these corporations had secured all the profit, and left the State to bear the loss.<sup>50</sup> The friends of the roads claimed that the lines had been

<sup>46</sup> Governor's Message, 1840.

<sup>47</sup> Ibid.

<sup>48</sup> Senate Resolutions, December 14, 1840.

<sup>49</sup> Minority report of Committee on Internal Improvements, 1843.

<sup>50</sup> Majority report of Committee on Internal Improvements, 1843.

successful and that the people of the State had been benefited by them. The truth is that too great results were expected, and that when the short lines that were in operation failed to bring all the advantages of great trunk lines, they were considered a failure.

There is no doubt, however, that there was much room for complaint. A quotation from Moore's History will explain conditions of that day:<sup>51</sup> "Our railways, in 1848, were a reproach to the State. The Seaboard and Roanoke Company was utterly prostrate, and its route no longer open to traffic and travel. The condition of the Raleigh and Gaston was almost as bad. The wheezy old engines still drew, painfully and slowly, a few coaches over the rugged and broken track. Amid dust and smoke and constant breaking down, the whole day was generally consumed in passing over the eighty miles between the hamlet at Gaston and the State capital. The Wilmington and Weldon<sup>52</sup> route was in somewhat better plight."

In 1852 the Raleigh and Gaston had passed from under the control of the State,<sup>53</sup> and an effort was being made to repair it. The State still owned stock in it, and it was hoped that instead of being a drain on the treasury, as heretofore, it would be an aid to it. The business was growing, and it was expected that for the years 1853 and 1854 the State would receive \$20,000 on its shares.<sup>54</sup> The Weldon and Gaston road was being constructed. This would connect the Raleigh and Gaston with the Seaboard and Roanoke, thus connecting it with the ocean. The Weldon and Gaston was a part of the Raleigh and Gaston, and the dividends of the former would be added to those of the parent road. Within two years the Raleigh and Gaston was paying six per cent dividends.<sup>55</sup> In 1856 the State received \$1500 from the road,<sup>56</sup> arising from the bonds held by the State. In 1857

<sup>51</sup> Vol. ii, p. 71.

<sup>52</sup> Still called at that time Wilmington & Raleigh.

<sup>53</sup> Governor Reid's Message, 1852.

<sup>54</sup> Treasurer's Report, 1852.

<sup>55</sup> Senate Documents, No. 29, 1854.

<sup>56</sup> Comptroller's Statement, 1856.

the State received \$16,800 interest,<sup>57</sup> and \$29,250 dividends.<sup>58</sup> The next year the interest on bonds was \$8400. In 1860 dividends from the road amounted to \$97,330.<sup>59</sup>

From this time on, the Raleigh and Gaston figures considerably in State history, being declared exempt from taxation, except its share of stock, and finally surrendering this exemption. It will be necessary to drop the account of the road here, as the latter part of its history falls outside the period under consideration. But to summarize in a few words the origin of the road: It was incorporated in 1835, and finished in 1839. The first cost was about \$1,600,000. In 1838 the State indorsed its bonds to the amount of \$500,000, and in 1840, \$300,000 more. When the road was sold under mortgage it was purchased by the State. After extensive repairs, about 1848, its business increased, and it paid very satisfactory dividends.

Some of the incorporations of 1836 must be mentioned: The Raleigh and Columbia road was to run from the terminus of the Raleigh and Gaston to South Carolina line near Rockingham. It was granted a capital stock of \$1,000,000, and its charter was to run for ninety years.<sup>60</sup>

The Norfolk and Edenton was also incorporated this year, with a capital stock of \$450,000, to connect the towns indicated by the name. It was likewise to enjoy the benefits of its charter for ninety years.<sup>61</sup> Another attempt to carry out the Central Road scheme was made this year when the North Carolina Central Railroad was incorporated.<sup>62</sup> Its capital stock was \$2,000,000, and it was to run from Beaufort, through Newbern, near Trenton, and thence through the State to the Tennessee line. Or it might run by the best route possible to Fayetteville, and intersect with the Cape Fear, Yadkin and Peegee road. But the State was not yet ready to give aid to this kind of a road, and the Central Road idea had to wait still longer for its realization.

<sup>57</sup> Ibid., 1857.

<sup>58</sup> Ibid., 1858.

<sup>59</sup> Governor's Message, 1860.

<sup>60</sup> Laws of North Carolina, 1836, ch. xl.

<sup>61</sup> Ibid., ch. xlvi.

<sup>62</sup> Ibid., 1836, ch. xlvii.

Other incorporations in the following years were the North and South Carolina Railroad Company, the Wilmington and Manchester, and the Charlotte and South Carolina Railroad Company.<sup>63</sup>

All these, however, are quite insignificant in comparison with another undertaking upon which the State soon entered. In the face of the apparent failures of the other roads, and the outcry against railroads, the State chartered the North Carolina Railroad Company, January 27, 1849.<sup>64</sup>

The struggle which brought about this result is one of the most interesting in the history of the State.<sup>65</sup> The middle and eastern parts of North Carolina had used the credit of the State to build the Raleigh and Gaston and the Wilmington and Weldon. But the west still lacked transportation facilities. Several things besides justice demanded the building of the proposed line. In 1845 the Piedmont section of the State suffered from a severe drought. This emphasized the necessity of some connection between the East and West. In the stricken section crops were virtually a failure. Corn rose from 50 cents to \$1.50 per bushel. "At the same time, all through the East, corn was rotting in the field, and fish were used to manure the land."<sup>66</sup> But the lack of transportation made it almost impossible for the West to use the products of the East, or, at best, rendered the transfer of produce very expensive.

Despairing of assistance from her own State, Charlotte, in 1845-46, began to look for help from the South, and to agitate the question of a connection with the railroad system of South Carolina. At the same time Richmond was trying to extend lines so as to reach the border counties on the north.

Governor Graham did not hesitate to say that North Carolina's transportation facilities were the worst in the Union.

<sup>63</sup> *Ibid.*, 1846-47, chs. 81, 82, 84.

<sup>64</sup> *Ibid.*, 1848-49, ch. 82.

<sup>65</sup> See *History of N. C. R. R. Co.*, by R. Barringer.

<sup>66</sup> Barringer.

To quote again: "The Raleigh and Gaston had utterly broken down, and was near a standstill; the Wilmington and Weldon was threatened with default, and the State was in the lurch for both." In spite of these evil conditions, Governor Graham advised a line of road from Raleigh to Salisbury, to be extended to Charlotte. He also suggested limited State aid. He thought this would save the Raleigh and Gaston, and prevent loss to the State on the latter road.

In the Legislature the fight was long and bitter. A line, known as the "Danville Connection," was proposed. All this company desired was the "naked charter." They did not want a cent of aid from the State. When the Dix bill for an asylum passed the Legislature, the friends of the railroad bill felt more hopeful. They regarded it as a step in the right direction—perhaps progress might win.

The author of the bill was W. S. Ashe, an Eastern Democrat, but a friend of the West.<sup>67</sup> The bill passed the House and went to the Senate. When the roll-call was completed on the vote in the Senate, it was found to be a tie. Speaker Graves was equal to the occasion and voted for the bill, and it passed.

The route of the road was to be from the Wilmington and Weldon, where it crosses the Neuse, to Charlotte, by way of Raleigh and Salisbury. The act authorized a capital stock of \$3,000,000, and provided that when one-third had been subscribed and at least \$500,000 had been paid in, the Board of Internal Improvements should subscribe for the remaining two-thirds for the State. Payments were to be made, one-fourth when the company began work, and one-fourth every six months until all was paid. The act further provided for borrowing money for the purpose, and appointed directors for the State.

Such was the beginning of the enterprise which has been so closely connected with the history of the State since. It appears that a reaction came near taking place in 1850. A

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<sup>67</sup> Moore's History, vol. ii, p. 72.

resolution of the House<sup>68</sup> disclosed that it was inexpedient to build the road at that time, because a majority of the free-men of the State were against it, and the stockholders were requested to give up their charter before January 1, 1851. A Senate resolution, however, in 1854, voices its pleasure at the construction of the road, and says that it was the first step in a great system since approved by the people.<sup>69</sup> The work of the road was begun, and it was carried forward amid many vexations.

In 1854 the treasurer of the State was authorized to subscribe for \$1,000,000 worth of preferred stock. All real estate of the company was to be exempt from taxation until the dividends should reach six per cent.<sup>70</sup> Two years later bonds of the road to the amount of \$350,000 were made exempt from taxation also.<sup>71</sup> The road was completed in 1856. Four years later dividends from it amounted to \$270,000.<sup>72</sup>

Its final extension to Asheville and beyond was begun in 1854, when the Western North Carolina Railroad was incorporated. According to an estimate made that year,<sup>73</sup> the cost of the North Carolina and Western North Carolina road by the Swannanoa route would be \$7,383,863. This part of the road was completed first to Morganton, and then, after many delays on account of the war, and afterwards from lack of funds, it was completed to Asheville. Here it splits. One branch, going by Paint Rock to Tennessee, was completed in 1882; the other, to Murphy, in 1890. The length of the road from Goldsboro to Charlotte is two hundred and twenty-three miles. Total length from Beaufort to Murphy is five hundred and thirty-eight miles.

Since the war the road has been constantly before the public—first, in the days of reconstruction, when the Western branch afforded abundant field for fraud, and since then, in politics in various ways. In 1871 it was leased to the

<sup>68</sup> House Resolution, November 27, 1850.

<sup>69</sup> Senate Resolution, Document No. 29, 1854.

<sup>70</sup> Laws of North Carolina, 1854, ch. xxxii.

<sup>71</sup> Ibid., 1856, ch. xxxii. <sup>72</sup> Governor's Message, 1860.

<sup>73</sup> Walter Gwynn, Chief Engineer.

Richmond and Danville for thirty years at a yearly rental of \$260,000. In 1895, after a sharp contest, it was leased for ninety-nine years to the Southern Railway. The State now owns three-fourths of the stock.

Of the roads incorporated between 1848 and the war, mention only will be made.

The Great Western River and Railroad Transportation Company in 1850 to improve Deep and Yadkin rivers, and connect the two by a railroad.

Tennessee River Railroad Company.

Newbern and Central.

Roanoke Valley Railroad Company.

Atlantic and North Carolina Railroad Company.

Charleston, Blue Ridge and Chattanooga R. R. Co.

Western Railroad Company.

Cheraw and Coalfield Railroad Company.

Albemarle and Suffolk Railroad Company.

Mountain Railroad Company.

Southern Air Line Railroad Company.

Salem and Germanton Railroad Company.

Gorysburg and Windsor Railroad Company.

The following table will illustrate the growth of railroad mileage in North Carolina :<sup>74</sup>

1840 .....	53 miles.
1841-48 .....	87 miles.
1849 .....	154 miles.
1850-51 .....	283 miles.
1852 .....	350 miles.
1853 .....	420 miles.
1854 .....	570 miles.
1855 .....	582 miles.
1856 .....	691 miles.
1857 .....	733 miles.
1858 .....	849 miles.
1859-62 .....	937 miles.

<sup>74</sup> This table will be found in "North Carolina: Her Past, Present, and Future," an address by J. H. Wheeler at State University in 1870.

This brings the history of railroads up to the war. From this point forward the question is one of increased importance. In reconstruction days it was one that stirred the bitterest feelings. Since then it has furnished its share of variety in the political activity of the State.

## CONCLUSION

In this brief study we have seen how the movement for Internal Improvements in North Carolina was rendered necessary by local conditions. We have noted how the State at first encouraged private companies and then offered them aid, and finally, as in the North Carolina Railroad, it took the initiative. It has also been shown how the State established a fund for Internal Improvement; the sources of the fund, its amount, and its gradual decrease. The effect of the general movement for Internal Improvement in the country at large was deeply felt in North Carolina and produced emulation to catch, first, the Western trade, and then the traffic of the Atlantic Coast. Failure was due to the lateness of the hour of beginning.

The political aspect of the question and its vital connection with the growth of democratic sentiment and the amending of the old aristocratic constitution is a matter of permanent importance. Economic changes came about by slow degrees. Many of the companies founded in this period are long since dead and the only very important part of the internal improvements of North Carolina still existing is the railroad system. To this the State contributed at an initial loss, but laid the foundations for the yet undetermined future.



# THE HISTORY OF JAPANESE PAPER CURRENCY

(1868-1890)



SERIES XXI

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THE HISTORY OF JAPANESE  
PAPER CURRENCY

(1868-1890)

BY  
MASAYOSHI TAKAKI, S. B.

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## CONTENTS

	PAGE
INTRODUCTION . . . . .	7
CHAPTER I.—GENESIS OF JAPANESE PAPER CURRENCY.	
Political condition of the country reviewed . . . . .	9
Financial condition of the government before the issue of paper currency . . . . .	10
Measures of the government . . . . .	10
Confiscation of the Tokugawa Domains . . . . .	11
Contraction of a domestic loan . . . . .	12
Plan of paper currency proposed . . . . .	13
Mr. Mioka on the subject of the issue . . . . .	14
Difficulties to be encountered . . . . .	15
Legislation of May, 1868 . . . . .	15
Objects of the paper issue . . . . .	16
To defray the government expenditure . . . . .	17
To lay a sure basis of national prosperity . . . . .	18
CHAPTER II.—CIRCULATION OF THE PAPER CURRENCY.	
Difficulties of circulation . . . . .	19
Opposition of <i>Daimyos</i> and <i>Samrais</i> . . . . .	19
Policy of the government . . . . .	20
Postponement of the emission . . . . .	21
Enforcement by law . . . . .	21
Popular refusal to accept paper currency . . . . .	21
Lack of confidence . . . . .	22
Existence of “clan-notes” . . . . .	22
Indefiniteness of the law . . . . .	22
Measures taken by the government . . . . .	24
Way opened for the circulation by legislative measures . . . . .	26
Appearance of counterfeit currency . . . . .	26

## CHAPTER III.—KINDS OF PAPER CURRENCY.

	PAGE
Clan-notes . . . . .	28
Government notes . . . . .	32
Civic department notes . . . . .	33
Treasury convertible certificates . . . . .	34
Colonial convertible certificates . . . . .	38
New paper money . . . . .	39
Improved new paper money . . . . .	44

## CHAPTER IV.—REDEMPTION OF PAPER CURRENCY.

Notes issued to cover temporary deficit and reissued shortly after issue . . . . .	45
Notes issued to defray the public expenditure and added to the permanent public debt . . . . .	46
Policy of redemption . . . . .	47
Issue of bonds in exchange for paper money . . . . .	47
Establishment of a national bank . . . . .	52
Establishment of the Bank of Japan . . . . .	54
Result of the government policy . . . . .	58
Bibliography . . . . .	60

# THE HISTORY OF JAPANESE PAPER CURRENCY.<sup>1</sup>

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## INTRODUCTION

According to historical records, the first paper money of Japan was issued as early as 1335 (Kembun Period); but particulars of the issue and characteristics of the notes are entirely unknown to us. It is generally believed, however, that this paper was not used in any considerable amounts.<sup>2</sup> Even the Tokugawa government, during its long régime, never put into circulation a government issue. Only at the close of its power, in 1867, did it sanction a paper money for the newly opened port of Hyogo; but this was withdrawn as soon as authorized. Hence, the paper currency issued by the government for the purpose of universal circulation throughout the Empire, began with the restoration in 1868.<sup>3</sup> Governmental currency being thus a new institution and its establishment occurring in the midst of internal political confusion, there were indescribable difficulties in the way of carrying through this financial measure. But notwithstanding these difficulties, the financiers and statesmen of the time

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<sup>1</sup> It has not been possible for Mr. Takaki to revise his manuscript or to correct the proof of his study. The monograph is accordingly printed in the form in which it was presented to, and accepted by the Board of University Studies of the Johns Hopkins University for the degree of Doctor of Philosophy, in June, 1895.—EDITORS.

<sup>2</sup> Transactions of the Asiatic Society of Japan, vol. xx, supplement, part I, p. 168.

<sup>3</sup> Issues of paper money by private persons were, of course, made in the shape of bank notes, but they had a circulation mainly in the large centres of trade. Since the period of Kwambun (1661-1673), there existed another paper money issued by the Daimyos, but it circulated only within the feudal territorial limits. See Count Matsukata's Report of 1890.

by their integrity and honesty were able to establish a solid basis for the currency system and to complete the liquidation of all the inconvertible paper notes before two decades had elapsed. To-day Japan, so far as her financial system is concerned, stands among the most advanced nations of the world.<sup>4</sup> It is the purpose of this monograph to trace the genesis, development and management of the Japanese paper currency, from the restoration of the imperial power in 1868 down to the establishment of constitutional government in 1890.

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<sup>4</sup> See the address of Mr. K. Watanabe, the Japanese Minister of State for Finance, at the second session of the Imperial Diet.

## CHAPTER I

### GENESIS OF JAPANESE PAPER CURRENCY

Before tracing the development of the paper currency system of Japan, in order that one may thoroughly understand the forces which compelled the government to issue the paper money, it is necessary to consider briefly, the condition of the country at the time when the Imperial power was restored and the present government was organized.

In the 12th month of Kio (1868) the Imperial proclamation was made that His Majesty, the Japanese Emperor, dismissed Yoshinobu Tokugawa, at the request of the latter, from the office of Shogun.<sup>5</sup> Thus, the Shogun ostensibly returned the ruling power which had been exercised by his family for more than two hundred and fifty years, to the hands of the Emperor who now became the sole ruler of the country. But this surrender of the Shogun was merely nominal, for although the sovereign power was formally transferred, the actual power over dominion and subjects remained in the hands of the feudal nobles who still continued to exercise governmental powers within their own territorial limits. As it was impossible, however, for the Emperor to "fulfil his high office" unless he possessed dominion and subjects, he sent an envoy to the Ex-Shogun and asked him to return such part of his revenue as had been allotted to him only as Shogun.<sup>6</sup> This proposition was refused by Yoshinobu who, however, signified his readiness to hand over to the Emperor a yearly income of a thousand *kokus*<sup>7</sup> and to continue the former allowance of one hundred

<sup>5</sup> Translation of the proclamation is given in American Executive Document, Diplomatic Correspondence, 1868-1869, p. 623.

<sup>6</sup> Mei-Ji-Shi-Yo, vol. i., p. 15.

<sup>7</sup> One koku was about \$5.00 in value.

and fifty thousand *kokus* to the Imperial Court. "He further declared that he himself was ready to submit to the orders of the Emperor, but the *Daimyos*, Aidz and Kuwana, resisted his wishes; lest there should be some violence committed by them, he would go to Osaka, dismiss them into their respective provinces and then return to Kyoto to await there the direction of the Imperial Court."<sup>8</sup> But a few days after this, when the envoy was sent to invite him to return to Kyoto as promised, the surprising intelligence came that Aidz and Kuwana, forming the van guard of Yoshinobu's army, had marched towards Kyoto, and that this advance section had attacked the Imperial guard at Toba and Fushimi. The rebels were repulsed and retreated to Osaka and thence to the northeastern provinces by sea. This treacherous conduct of the Ex-Shogun caused the Emperor to declare war against Tokugawa and his adherents, and to appoint Prince Arisugawa as the commander-in-chief of the suppressing forces. Thus, the civil war which revolutionized Japan was begun.

In this din of war and political confusion, the new government began its administration. It was a critical period for the nation. Old institutions were up-rooted; but new institutions were not yet fully established to take the place of the old. The Imperial forces had gained a victory in the single battle of Toba and Fushimi, yet almost all the *Daimyos* stationed east of the Hakone Mountains supported the Ex-Shogun, and resisted the Imperial army. The attitude of the *Daimyos*, who were in a state of alienation and insubordination, was yet a matter of uncertainty. Men's minds were unsettled and public business was in a state of confusion. "The great work of restoring the ancient constitution," says Mr. Okubo in his famous memorial, "is only half accomplished; nay it may be said that it has only commenced."<sup>9</sup> And although every step of the reform under-

<sup>8</sup> American Executive Diplomatic Correspondence, 1868-1869, p. 662.

<sup>9</sup> Mr. Okubo's Memorial, dated Jan. 25, 1868.

taken and every measure adopted demanded constant outlay by the government, yet no means were available whereby this enormous expenditure might be met. How far the financial embarrassment of the government extended can be seen from the letter of the Treasury Bureau to the commander-in-chief of the Imperial army, who asked for a further supply of provisions. It says: "Although we acknowledge that the military funds are, at this crisis of the nation, of the most pressing need, yet, as has been said before, the Treasury Bureau is at present an empty bureau; . . . we have not means sufficient to meet even the ordinary expenses of the Bureau . . ."<sup>10</sup> Mr. Mioka (now Viscount Yuri) describing the financial condition of the government at that time says: "A large army was in the field engaged in suppressing the rebellion but the government had no supplies to send them; every road brought in wounded officers and dying soldiers, but no means to take care of them existed; messenger after messenger from the military headquarters came with urgent pleas for re-enforcements, but the government had to send them back discouraged. The embarrassment of the government was beyond description."<sup>11</sup>

Examining the statistics of government expenditure, we find that the extraordinary disbursement for that year alone reached the enormous figure of 25,000,000 *yen*, while the whole of the government revenue from ordinary sources amounted to no more than 3,600,000 *yen*.<sup>12</sup>

The question which demanded immediate solution was "How should the government meet this enormous expenditure with an empty Treasury?" Many plans were suggested, but most of them were theoretical and not applicable to the situation. As the first step towards the solution of the problem, the government issued an Imperial decree three days after the declaration of the war, that "all the Toku-

<sup>10</sup> *Mei-Ji-Sei-Shi*, vol. i, p. 109.

<sup>11</sup> Quoted in *Mei-Ji-Sei-Shi*, vol. i., p. 114.

<sup>12</sup> *General Review of Financial Policy during Thirteen Years*, p. 9.

gawa domains should hereafter be under the direct control of the Imperial power.”<sup>13</sup> This was theoretically a great advance towards acquiring the sovereign power of government, but it did not afford any pecuniary aid towards the formation of a new government, since it was practically impossible for the administration to confiscate all the domains without putting itself in danger of creating riots at a time when the empire was in an unsettled condition. Even had it been possible to collect all arrears, the whole would not have sufficed to meet even ordinary expenses. As has been said before, the territorial nobility still continued to exercise the power of government, making it impossible for the government to obtain from them more than an annual contribution of about 700,000 *yen* for military purposes. The government was obliged therefore to take another step, namely to contract a domestic loan. On May 5, 1868, the Emperor issued a decree stating: “The government has to spend much and receives little for its Treasury . . . At a time of national crisis, it is the duty of the subjects of the Emperor to serve the country according to their ability and occupation; those who have boldness and courage, by joining the Imperial army; those who have means, by contributing to the military fund. Thus each and every one can have opportunity of fulfilling the duty which has been assigned to him.”<sup>14</sup> Again in the official letter of the Treasury Bureau to Mr. Matsukata (now Count), the Governor of Hida Prefecture, it is stated that “the government has been suffering from financial difficulties and can not meet the pressing need of the Imperial army in the field. We sincerely wish, therefore, that your good office, bearing this embarrassment in mind, would exercise its best effort in raising a loan immediately in your Prefecture.”<sup>15</sup>

But this measure was intended to afford only temporary relief, in meeting an urgent emergency. Owing to the lack

<sup>13</sup> *Mei-Ji-Sei-Shi*, vol. i, p. 109.

<sup>15</sup> *Mei-Ji-Sei-Shi*, vol. i, p. 109.

<sup>14</sup> *Mei-Ji-Sei-Shi*, vol. i, p. 119.

of confidence in the new government, together with the fact that the Tokugawa government had employed a similar measure before, the people were indifferent towards the loan. In the unsettled condition of affairs, many rich merchants hid their wealth and tried to escape from the subscription. Although this action seems to have been unpatriotic and even disloyal to the country, yet considering the condition of the time, it was not at all surprising. Count Okuma, in his "Reminiscence," gives an instance illustrating how hard it was for the officials to raise money for government use. He says, "When the government wanted to pay for an American vessel, the 'Stonewall,' which had been purchased by the Old Régime, I was appointed as the government commissioner for the settlement of the matter. But as there was no money in the treasury for this purpose, I went to Osaka and even with the aid of violent threats on the part of the local authority, I could raise only 250,000 *yen*."<sup>16</sup> This was the effect of the measure in the wealthy city of Osaka. We can judge of the difficulty of raising the remainder of the desired loan in other cities and provinces. There was an instance in which the government was forced to borrow 100,000 *yen* for ten days at one and half per cent interest. Thus the amount raised in every possible way was insufficient to meet the constantly increasing outlay. "The loans obtained," says Count Okuma, "together with the money handed over by the Shogunate and the fines or gifts of the *Daimyos* amounted barely to 5,380,000 *yen*, or a total, from ordinary and extraordinary sources, of about 9,040,000 *yen*."<sup>17</sup> Since the expenditures reached 25,000,000 *yen*, there was left a deficit of 15,900,000 *yen*. The financial difficulty of the government had reached its climax, and the government proceeded to adopt more permanent measures for the salvation of the country from financial peril, namely to resort to the issue of a paper currency.

<sup>16</sup> Count Okuma's "Reminiscence," No. 123 (as published in the Ho-Chi-Shim-Bun.)

<sup>17</sup> Count Okuma's "Review," p. 9.

As has been stated in the foregoing pages, the financial condition of the government had become so critical that the effect of further delay would have been serious. At this time the plan of issuing paper money was proposed as a means of saving the government from its financial peril. The originator of the scheme was Mr. Hachiro Mioka,<sup>18</sup> a retainer of Yechizen and a councillor of state. He was known as an able financier and had won the confidence of such older statesmen as Messrs. Kido and Okubo. The plan was similar to the "Land Bank" system of England and the "Paper Bank" system of Rhode Island. It was in brief to issue paper notes, 48,973,000 *yen* upon the cultivated land of the Empire for security, to be circulated for thirteen years.

In regard to the issue, Mr. Mioka said, "For some time I had had a strong conviction that if we would issue a paper money to be circulated throughout the Empire, thus expanding the medium of exchange, we could lay a sure basis for the commercial and industrial prosperity of the country. . . . For, although prior to the issue of paper money in my province (Yechizen), we suffered from poverty and hard times, yet from the time the new medium of exchange (paper notes) was put into circulation, industry and trade had sprung up and the provinces which hitherto had no coin, had now become a wealthy country with 350,000 *rio* in coin. Having this in view, I sought to bring my belief into realization and explained my plan to all the statesmen of the time. But owing partly to the seemingly radical character of the scheme, and partly to the ignorance of most public men in respect to the matter, there was much opposition to the plan which I thought to be the only means of saving the country. As it was impossible to settle the question at once, the government called an assembly of councillors of state to consider the question. Thus all, together with the members of the Imperial Household, came before the thorne on

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<sup>18</sup> Now Viscount Yuri, a member of the House of Peers.

January 29, 1868. The method of proceedings (this being before the western parliamentary rules were known to us) was very strange; each member present was to speak on the question in turn. When my turn came, I proposed and discussed at some length the necessity and benefit of the issue of a paper money. My statements created great excitement among those assembled, and an excited discussion of the problem, pro and con, ensued. The final result of the debate was the order that my proposition be accepted, and I was authorized to make preparation for the issue of paper money at once.”<sup>19</sup> Thus, in the intercalary month (from the twenty-second of May to the nineteenth of June), the *Dai-Jo-Kwan* (Central Government) issued the following proclamation:

“To create a sure basis for the prosperity of the realm on the occasion of the reformation of the Imperial government, after mature consideration, the issue of paper money has been decreed; and according to His Majesty’s orders this paper money shall pass current in the whole empire from the present year Tatz to the next year Tatz, i. e. for thirteen years, that by it the poverty which reigns everywhere in the country may be alleviated. The rules to be observed are mentioned below:

“The day from which it shall be put into circulation shall be published by the proper authorities to all people, even down to the lowest class.

“As the introduction of paper money has been decreed, all *Daimyos* shall be able to obtain loans according to their incomes, so that for every ten thousand *kokus* they may get ten thousand *rios*. They must submit their wishes with regard to this to the proper authorities.

“With regard to the re-payment they will be obliged to pay every year, for thirteen years, a tenth of the sum lent; payment to be made in notes, so that at the end of the next Tatz, the re-payments will have been effected.

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<sup>19</sup> Mr. Mioka’s address on the “Issue of the paper money,” quoted in *Mei-Ji-Sei-Shi*, vol. i, pp. 112-118.

"The princes shall bear in mind that according to the intentions of the Emperor, through the paper money lent to them, a sure basis will be created for the prosperity of the country. They shall use it, therefore, to assist industry as much as possible, and to benefit their provinces. The government of the princes cannot be allowed to use their notes for unlawful purposes.

"To the merchants of Kyoto and of Setz (Osaka) and of the neighboring rural districts, who desire to contract such loans, notes shall be given in accordance with the amount of business they transact, after they have expressed their wishes to the officers issuing the notes.

"To the inhabitants of the towns and villages of the Saibansho districts<sup>20</sup> in the whole country, and in the territories of the province at their demand, after their fortune has been assessed, loans shall be given for the carrying on of their business. With regard to the repayment, they shall pay every year a convenient part of the sum with the interest.

"Everywhere, in the whole country, the same principles shall be observed as with the merchants at Kyoto and Osaka.

"Such notes as are annually repaid shall be destroyed in the *Kaikeikyoku*.<sup>21</sup>

"From the money lent this year between the first and seventh month exclusive, ten per cent shall be returned at the end of this year; from the money lent between the seventh and twelfth month, only five per cent.

"In this manner, according to the will and decision of the Emperor, a substitute shall be created for the waiting coins. Nobody, therefore, ought to censure this measure. As, however, the loans are contracted in notes and are to be repaid in notes, no exchange (against coin) shall take place."<sup>22</sup>

According to the above text, the sole object of issuing

<sup>20</sup> Judicial District.

<sup>21</sup> Bureau for Finance.

<sup>22</sup> Translation is given in American Executive Documents. Diplomatic Correspondence, vol. i, 1868-1869, pp. 795-6.

the paper money appears to have been to create "a sure basis for the prosperity of the country." But if this were the only object, it is difficult to understand why the measure was adopted just at that time, for the government knew that the over-issue of the clan notes had already caused their value to fall to the lowest limit, that the people would refuse the circulation of paper note of any kind, and that, consequently, it was impossible for the government to lay a sure basis for the prosperity of the country by introducing a medium of exchange which the people would dislike and refuse to circulate. Hence there must have been some other impulse in consequence of which the government was driven to adopt the measure at this unfavorable time; namely, the insufficiency of existing revenues to meet the expenditure of the government. This is clear from the facts mentioned in the foregoing pages.

We must not, however, consider that the object stated in the text was a mere pretense of the government. It was true that as the capital of the country was not sufficient for the growing industry, it seemed desirable in some way to increase the usefulness of that capital in order to extend national industry. Moreover, the familiar maxim that 'when a people becomes rich, the King thereof will also become rich,' still remained in the minds of the officials of the Empire. Under these influences, the government sought to assist the people who were not able to extend their business on account of scarcity of capital. Quoting the words of Mr. Mioka, the originator of the scheme, "During the Keio period, the Tokugawa government following the Western system, had issued paper notes."<sup>23</sup> I thought then that such notes would never benefit the country but rather hurt its industries; the more paper notes issued, the poorer country Japan would become, for the object of the Tokugawa government in this respect was the profit of the treasury only, not the benefit of the people. This is contrary to the

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<sup>23</sup> Cf., p. 1, above.

true end of sound currency and the principles of political economy. But our object was different from this; it was to aid the people who had no means of carrying on industry.”<sup>24</sup>

Soon after the proclamation was promulgated, the government established the Bureau of Trade and Industry and took measures for promoting industry and commerce.<sup>25</sup> It is also true that in accordance with the clause in the text, the government loaned the notes to merchants and farmers, although there is no method of knowing how much these classes received. In the statistics of the “Government Revenue” for the second fiscal term (Jan. 1869-Sept. 1869) we find an item, “Repayment of Industrial Loan” which amounted (for that year) to 4,496,009,000 yen. Thus, it is evident that the object of the government was twofold: To defray the expenses of the government and to increase the national capital. “There was moreover,” says Count Okuma in his “Review,” “a deficiency of capital in the country, and as only a very short time had elapsed since the Restoration, it would have been impossible for the government, during the first five or six years of its existence, to raise sufficient funds by way of internal loans to meet its expenditures. Under these circumstances, a resort to the issue of a paper currency became absolutely unavoidable.”<sup>26</sup>

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<sup>24</sup> Mr. Mioka’s address quoted in *Mei-Ji-Sei-Shi*, vol. i, p. 113.

<sup>25</sup> *Mei-Ji-Sei-Shi*, vol. i, p. 121.

<sup>26</sup> Okuma’s “Review,” p. 8. Afterwards five other kinds of notes were issued and circulated, the genesis and characteristics of which will be considered in Chapter III.

## CHAPTER II

### CIRCULATION OF THE PAPER CURRENCY

The proclamation was issued in the expectation that the notes might be circulated as soon as prepared. Mr. Mioka and his subordinates were busily engaged in the preparation of the issue. In summing up the work and the difficulties, these officials encountered, Mr. Mioka says: "Since the day of my appointment to this important office, I pledged myself to labor for this great project of the government as hard as my strength would allow. Yet an unexpected difficulty was the increase both in the number and influence of the opponents of the measure. They employed many assassins and tried to take my life, hoping thus to check the completion of the issue. I did not care so much for my life as for the plans of the government, for if I fell under the dagger of an assassin, the work we had undertaken might never be accomplished. On the other hand, the messengers from the battle field came as often as three times a day, and brought urgent pleas for reinforcements. In this dangerous situation we were placed and we worked day and night, until most of the required amount was prepared."<sup>1</sup>

On May 9, 1869, the notification of the central government was issued stating, "The paper currency which has been decreed, will be circulated from May 15, 1868."<sup>2</sup> When the time fixed for the issue of the paper money approached its opponents increased their efforts, and finally compelled the government to postpone the issue. These opponents were not among the traders and the merchant class, but were found among the *Daimyos* and *Samurai* classes. The chief cause of this opposition appears to have

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<sup>1</sup> Mei-Ji-Sei-Shi, vol. i, p. 116. <sup>2</sup> Kempo-Rui-Hen, vol. ix, p. 26.

been the interest of these classes who were benefited by the circulation of the "clan-notes" and whose interests might be affected by the circulation of the new paper money. To understand the situation, we again refer to the words of Mr. Mioka himself. He says: "In order to begin to circulate the paper money from the date fixed by the decree, we had made all arrangements for this purpose. It was not an easy task to make such preparation at the time when we had no telegraph system and no such rapid distribution of mail as we have now. When all the preparations were made and it was our intention to issue the notes on the next day, to our great surprise and disappointment, an order of postponement reached us. Indeed, this was a very vexing question, for there was no way to stop the circulation because we had already sent the notes out to the principal cities and towns ordering the local authorities to distribute them. Even if we sent out messengers to these places, they could not reach the destination before the time assigned for the issue. I explained this difficulty to the authorities and they did not know what could be done. The question was how to stop the circulation. I told them there was no way to stop the circulation of the notes which were sent out. But I had one plan to stop the circulation of those in our hands without altering the decree and without weakening public confidence in the government. That was to set the Ni-Jo-Jo (a building where the paper notes were stored) on fire and destroy the notes; and then I would kill myself. Thus the government could announce my conduct and could postpone the circulation without injuring the dignity of the administration."<sup>3</sup>

Thus the problem of the paper currency returned to its original status, by the opposition of the nobility and the soldier class. But the condition of affairs was so critical that Prince Iwakura said: "If no notes are issued, the soldiers on the battle field will starve." The opposition of the

<sup>3</sup> *Mei-Ji-Sei-Shi*, vol. i, p. 117.

anti-paper currency party was in the end unsuccessful and the government ordered Mr. Mioka to go on with his work and proceeded to enforce the law. Yet its opponents offered such stubborn resistance that in one instance General Saigo was obliged to go to Shimonoseki with an army in order to enforce the measure.<sup>4</sup> Only through difficulties and hindrances was the first paper money issued on May 25, 1868.

Now that we have considered how the first paper money was issued and what difficulties the government had faced, let us turn to the results of the issue and thereafter to the measures which the government adopted for the circulation of the notes. It is a difficult task to introduce a new institution but it is equally difficult, if not more so, to put the scheme into actual operation. When the plan of issuing paper currency was projected, the administration met with manifold difficulties owing partly to the ignorance and prejudices of some officers against the plan, and partly to the indefiniteness of the government's design. But when it became necessary to circulate the money among the people, the difficulties became more serious. Every merchant and tradesman refused to receive it. In fact, the money almost ceased to circulate at all. The causes which led to this general refusal were as follows:

First. As has been stated before, this being the first paper money ever issued by the central government, especially a newly organized government, the people regarded the measure with little confidence and with suspicion as to its credibility. This distrust of the government on the part of the people was the principal cause of the failure in circulation.

Second. At that time, the monetary system of the clan governments was grossly corrupt, and the central authority being busied with the improvement of its own administrative organs and with the efforts to suppress the rebellion in the North, was not able to effect reform. These clan-gov-

<sup>4</sup> *Mei-Ji-Sei-Shi*, vol. i, p. 117.

ernments changed their paper currencies frequently, destroying old and issuing new notes, whenever the change was beneficial to the treasury, without regard to the suffering and loss of the people. Through this arbitrary financial management, whenever such alteration took place, the people suffered great loss. Naturally they looked upon the central government's notes in the same light as the clan-notes, and had no confidence in the newly introduced medium of exchange.

Third. In addition to these general causes, there was a more specific and immediate cause, namely the indefiniteness of the redemption clause of the act of 1868. The act made no definite statement as to the limit of the issue and the method of redemption, other than the following: "such notes as are yearly repaid shall be destroyed in the Kai-Kei-Kyoku (Bureau of Treasury)." <sup>5</sup> Now, although it was stated that the object of issuing the paper money was to lay the foundation of national prosperity, yet the people knew that the real object was to make up the deficit of the public expenditure. It was clear that the money lent to the people might be redeemed at the end of thirteen years. But the people questioned how the government would manage the paper money issued for its own use.

These causes, together with other minor matters, brought the value of the paper money down to a minimum. The depreciation began literally with its issue. Merchants in cities refused to receive it at its face value, and the people in rural districts refused to take it at all. In consequence even in the three business centres of the country, Tokyo, Osaka and Kyoto, it was used only at sixty per cent discount.<sup>6</sup> In the provincial districts it did not circulate at all.

How the government faced such difficulties and overcame them is our next consideration. One of two measures the government was obliged to adopt; either to abandon the plan altogether or to enforce the act with power. No middle

<sup>5</sup> Cf., p. 15, above.

<sup>6</sup> Mei-Ji-Sei-Shi, vol. i, p. 203.

course was left. It was impossible to adopt the first course, on account of the critical condition of public finance, as has been repeatedly intimated. Hence resort was had to the second course. In order to remove the existing difficulties and prejudices, the government took various measures, now appealing to the patriotic sentiment of the people, again seeking to secure co-operation by words of threat and persuasion. But these failed in creating sufficient confidence in the minds of the people to cause them to accept the paper money as the government desired, and the value of the money continued to fall. The depreciation occasioned the formation of an "exchange-commission House," where the paper currency was exchanged for specie at a certain discount. This institution intensified popular dislike of the paper notes.

The government then resorted to more vigorous action, prohibiting "any person or persons from fixing any ratio of exchange of paper for specie" and ordering that "the violation of the law should be liable to punishment."<sup>7</sup> This measure, however, did not prevent the depreciation of the paper notes, but rather increased the people's distrust of the action of the government. The next step to open a way for the distrusted currency, was to create a demand for the paper money. This was done in the form of a proclamation that "all taxes shall be payable in the paper money concurrently with coin, in so far as is practicable."<sup>8</sup> A certain demand for the notes was created and their value rose somewhat, yet they circulated at twenty per cent discount. The second compulsory act was then adopted, providing that "any one who should refuse to circulate the paper money should be regarded as one who resists and denies the Imperial Order." But notwithstanding the enactment of this measure, the people refused to receive the paper money, and there were many who were charged with violation of the law and imprisoned.

<sup>7</sup> Kempo-Rui-Hen, vol. ix, p. 26.

<sup>8</sup> Kempo-Rui-Hen, vol. ix, p. 26.

Thus, although the government exercised its power in various ways to secure the circulation of the government notes, the natural course of events could not be prevented, and the people's dislike for the paper notes became greater and the fall in value of paper money continued. This compelled the government to adopt an altogether different policy from what it had taken before. The former decree which had prohibited the fixing of a ratio between specie and paper was repealed and a new decree which permitted the use of the paper money according to its market value was now promulgated. With the announcement of this law, those who were imprisoned as the violators of the former decree were released. But this new act permitted different values in different parts of the country and there was no way to estimate accurately the income of the government. Therefore, the government issued a further decree which provided that "all the taxes and dues should be paid in the paper money as well as specie in the ratio of one hundred and twenty *rio* and one hundred *rio*; that the government would pay its outlay with the paper currency estimated at the average value of ten days in a month."<sup>9</sup> As soon as this decree was issued, the value of the paper money began to fluctuate so greatly that the government, before the measure was put into operation, was forced to amend the decree and to change the last clause, so as to read that "all government outlay and salaries would be paid in paper money in the ratio to specie stated, namely, one hundred and twenty of paper to one hundred of coin."<sup>10</sup> The people still, however, continued refusing to receive the money; all kinds of business fell into a state of stagnation; some of the wealthiest merchants closed their doors and many smaller houses were dragged down by their fall; the distrust took hold of the public mind and commercial credit was greatly injured.

In 1869, the government determined to bring the paper currency up to par, and in April of that year rescinded the

<sup>9</sup> Mei-Ji-Sei-Shi, vol. i, pp. 205-206. <sup>10</sup> Mei-Ji-Sei-Shi, vol. i, p. 206.

last decree and enacted that no difference between coin and paper money should be established, announcing furthermore that not only the violators of this law should be punished but also the head of the province of which the transgressor was a resident. The government also prohibited any exchange of paper money for coin except in cases where the exchange was an absolute necessity.

But the natural course of events could not be stopped and the tendency of the public will could not be checked merely by laws and edicts, if not rightly applied. Thus, when the government tried to raise the value of the paper money by prohibiting the establishment of any market discount, the value thereof fell; when it was ordered that the notes be circulated throughout the empire, they returned to the cities; again, when the paper money was ordered for use in daily transaction, it lost the quality which would make it the standard of value and consequently of adjustment of prices. Hence, in June, 1869, the government was forced to issue the decree making the paper currency redeemable in thirteen years, announcing that either it would be redeemed in coin by the end of 1882, or if that were not done, interest at the rate of six per cent would be allowed upon the whole amount in circulation.<sup>11</sup> It also announced its intention of abandoning the issue of large quantities of paper money which had been contemplated and of destroying the machinery that had been erected for that purpose, and further that any one found offering a discount upon paper money would be fined. The thirteen years during which the notes were to remain outstanding were shortened to five years<sup>12</sup> and the maximum amount was limited to the existing sum, 32,500,000 *rio*. Through these measures fixing the maximum amount and the term of redemption, a stable ratio of exchange of paper currency was established; but the dislike to its use still prevailed among the people of provincial districts. Consequently, all paper money returned to the cities and specie left

<sup>11</sup> Count Okuma's Review.

<sup>12</sup> Count Matsukata's Report of 1890, p. 315.

cities for the rural places, a scarcity of metallic money in cities resulted, general prices rose and the people in the cities fell into still greater distress. The government vainly attempted to level prices in the cities and provincial districts by distributing paper money according to the amount of the products of the farming people, and also by distributing coins which gathered in the country places among the city people.<sup>13</sup> These plans being unsuccessful, the government was forced to withdraw the paper money thus distributed.

In June, 1870, when the Rebellion was suppressed and the people began to know the policy of the government, the decree was issued that the prefectures should form an alliance to circulate the paper money. This was carried on very successfully and from this time on the way to the circulation of the paper money was gradually opened, until within a few months it circulated at par with specie.

Although these legislative measures may have had something to do with bringing the value of the currency to that point, yet there were two important causes by which the success was attained, namely, first, the increased confidence of the people in the government; second, the desperate condition of the currency system of the old régime.

1. The depreciation of the paper money was not caused by over-issue, but by the lack of confidence of the people in the government. Hence, when the civil war was over, when the social order was restored, and the people understood the plan and policy of the government, the confidence was increased and the notes began to circulate. Notwithstanding the fact that the issue of notes was greatly increased, yet the value rose not only to par with specie but specie was exchanged for paper at a discount.<sup>14</sup>

2. At the close of the Tokugawa régime, when the government was in distress for lack of funds, good coins were melted and recoined into an inferior money with alloys.

<sup>13</sup> Kem-Po-Rui-Hen, vol. ix, p. 38.

<sup>14</sup> Count Matsukata's Financial Report of 1890, p. 22.

Thus the amount of currency was increased and its real value decreased. Moreover, when the central power of the Tokugawa government became weak, each separate feudal local government practiced this same process of recoinage. In this way, when the Restoration was established and the new government was formed, the currency system was grievously and excessively corrupted; all good coin was either stored in the treasuries of wealthy men and withdrawn from circulation, or exported to foreign countries, while the coin in circulation was debased money which had lost the quality permitting it to be a standard of value. The consequence was that coin of the same denomination came to have many different values according to the quantity of gold it contained.

In addition to these debased coins, there were so-called "clan-notes."<sup>15</sup> Soon after the Restoration, as well as before, the clans needed funds to accomplish certain internal reforms of clan government and over-issued the notes until they had no value. Although these notes were circulated only within each clan, yet the issue was universally adopted, and over-issue affected the trade of the whole country. Thus, the people suffered from various difficulties; in internal trade within a clan, they suffered from over-issue of the paper currency and, in external trade without the clan, from the circulation of the debased money. Thus the cry for a uniform correct system of currency came from all parts of the Empire. Just at that time, the Imperial government announced that the government notes would be exchanged for the good coin and a uniform monetary system would be established within a few years. Moreover, the government succeeded in reforming all corruptions and in assuring the public of the fidelity of the administration. With the confidence in the government, the credit of paper money was increased. Thus the depreciation of the clan notes and the debased coins of the old régime were turned to the benefit of the new government notes.

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<sup>15</sup> See Chap. III.

## CHAPTER III

### KINDS OF THE PAPER CURRENCY

When the Imperial government began its administration, the prevailing paper money was the so-called Hansatsu (clan notes), which had been in use since the seventeenth century. With the new administration, a new currency system was instituted, under which there was another issue of paper money. This new paper money was of six kinds, namely:

1. The Dai-Jo-Kwan-Satsu (Government Notes), 2. The Mim-Bu-Sho-Satsu (Civic Department Notes), 3. O-Kura-Sho-Dakkwan-Sho-Ken (Treasury Convertible Notes), 4. The Kai-Taku-Shi-Dakkwan-Sho-Ken (Colonial Department Convertible Notes), 5. Shin-Shi-He (New Paper Money), 6. Kai-Ryo-Shi-He (Improved Notes). These various notes will be described in succession.

*Han-Satsu* (Clan Notes).—In the period of the Kwam-Bun (1661-1673), Matsudaira Tada Masa, the Prince of Fukui, having suffered financial embarrassment, after proclaiming that the Tokugawa government had not fulfilled its promise to grant him additional territory, persuaded the Shogun to give permission for the issue of clan notes to be circulated within his territory. This was the origin of clan notes, which were circulated until the abolishment of Hans (clan notes) in 1872. In the Gen-Roku (1688-1704), many southwestern provinces following the Fukui experiment, and issued silver notes to a considerable extent.<sup>1</sup> Thereafter the feudal nobles who suffered from financial difficulties adopted this measure to relieve the provinces from embarrassment. Although the Tokugawa government

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<sup>1</sup> The use of paper money was introduced from China where it had existed since the Dynasty of Kan. *Mei-Ji-Sei-Shi*, vol. i, p. 367.

objected strongly to surrendering the exclusive right of coinage, it was compelled to grant this right to a few *Daimyos*. Now to restore the right, "in 1707 (Hoyei IV), the government prohibited the further issue of all such money, in terms which seemed also to include even the continued circulation of what had been already put forth. In 1730 (Kyolu XV) it was found necessary to repeal this prohibition, in order to bolster up the price of rice. The permission applied to gold, silver and copper bills equally, and was to continue in the case of *Daimyos* of 200,000 koku or more for twenty-five years, but in the case of those of smaller estates, for fifteen years only. In 1755, the license was restricted to silver bills only. Subsequent legislation merely declared the policy of refusing to grant it to daimiates other than those already possessing the privilege.<sup>2</sup> At the close of the Tokugawa government, many fiefs issued more paper money than the law allowed and some of the *Daimyos* issued notes without any permission at all.

These silver notes were of many denominations. In Fukui (Echizen), for instance, where the earliest issue of clan notes took place, the denominations were 1, 2, 3, 5, 10, 50 and 100 *momme*. It would seem that none of the issues were in name irredeemable, although the actual value of the notes was more or less affected by the pecuniary condition of the fief. Some of the more opulent *Daimyos* established at Osaka banks for the redemption of their issues and in consequence their notes had a large circulation outside their own fiefs. Various artifices were employed to induce the acceptance of the paper money. For instance, the Prince of Bizen ordered that for 100 *momme* of silver coin, 101 *momme* of notes would be given, while for 102 *momme* of notes, there would be given only 100 *momme* of silver. It will easily be understood that, from the scarcity of coined money under the old régime, the *Daimyos* in many cases

<sup>2</sup> Transactions of the Asiatic Society of Japan, vol. xx, supplement, p. 168.

felt themselves compelled to increase the currency circulation by issuing paper money. In other cases, the necessity arose of defending their own fiefs from the paper money of adjacent fiefs by following the example of their neighbors, and thus preventing a drain of their own coin. But there were many cases in which paper money was resorted to merely as a means of escape from pecuniary embarrassment which both the taxes and the official money-lenders were powerless to relieve.<sup>3</sup> At the time of the Restoration, the over-issue of the paper notes had reached its maximum and, consequently, the fall in the value of the notes was considerable, its exchange ratio being one-eighteenth of gold. Thus, the clan notes came to be of scarcely more value than waste paper. When the new government issued paper money the clan notes interfered greatly with its circulation. The two notes could not exist together, for as the circulation of one was extended, that of the other was necessarily contracted. When the Hans (clans) were abolished and the country was redivided into prefectures, the chief object of the government was the centralization of power. This included, of course, the right of coinage. But the existence of the clan notes was contrary to the centralization of government, for at that time there were in circulation many inconvertible currencies issued by the different authorities. Moreover, this was not only detrimental to the commerce and industry of the country, but it affected directly the finances of the government, because since the clan notes were legal tender, the government was obliged to accept them whenever presented for taxes, dues, etc., while the clan notes could not be used throughout the country, but only within certain feudal territories.

For these reasons, as early as 1870, the government directed its attention to the clan notes. At first, the government issued an order prohibiting the circulation of the notes

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<sup>3</sup> Transactions of the Asiatic Society of Japan, vol. xx, supplement, p. 169.

issued without the permission of the Shogunate, and those issued after the Restoration. Secondly, all further issue of notes and bills similar to the clan notes was stopped and the manufacture of the paper used for the clan notes was brought under direct governmental inspection. Finally, the government attempted to exchange the clan notes for government notes. In the decree issued on July 14, 1871, we read, "currency should be of uniform nature, yet heretofore the different fiefs have issued various notes, and the system has thus become heterogeneous, while the exchange value of the notes has become extremely confusing. Now that the Hans are abolished, these notes should be exchanged for the government notes according to the exchange value of to-day."<sup>4</sup> Later on, it was ordered that "such plates as are used for printing the notes, and the unused material shall be taken by the authorities and be destroyed."<sup>5</sup>

At the close of the Tokugawa régime there were 244 Hans (clans), 14 Ken (Tokugawa's direct territory), 9 Hatamoto (direct retainers of Tokugawa), whose issues of paper money were extant. The notes were of various kinds, and of different denominations; there were 1694 different kinds and the amount of circulation in the value of the coin, was 24,930,000 yen. At first, the government ordered the Hans to liquidate all the notes in circulation within each territory, but owing to the inability of the Hans to do so, the government was obliged to assume the liability for the entire amount. To accomplish this the government determined to exchange the clan notes for the "New Paper Money,"<sup>6</sup> thus unifying the currency system of the country. Two difficulties presented themselves in carrying out this measure: 1. The heterogeneous kinds of clan notes, and the existence of notes of small denominations; 2. The absence of any provision for the exchange of these notes. The government was accordingly forced to postpone the exchange and to permit the clan notes to continue in circulation.

<sup>4</sup> Kem-Po-Rui-Hen, vol. iv, p. 25.

<sup>5</sup> Kem-Po-Rui-Hen, vol. iv, p. 34.

<sup>6</sup> See p. 39.

The abolition of the Han and the establishment of prefectures, created confusion in regard to the boundaries of territory, since the old Han did not altogether correspond with the new prefecture, and consequently there was also confusion of the limits of the circulation of the clan notes, resulting in their depreciation. To overcome this difficulty, the government fixed a ratio between the clan notes and new currency on one hand and, on the other, it defined the boundary lines within which each clan note should be circulated. For example, where an old clan now came under the jurisdiction of more than one political division, according to the new system, the clan note could be circulated within the new political division, although it might be outside of the original clan jurisdiction. In order to raise the value of the notes, the banks were ordered to buy in the notes where they were the most depreciated, and the government, at the same time, undertook to cancel all the notes. Such notes as were received from the Hans, either for the reserves, or for the repayment of individual loans, or for taxes or dues, were destroyed. But the exchange of small notes of less than 5 sen (cent) was postponed until small coin could be issued.

In 1872 when the whole provision for the exchange of clan notes was made, the government began to exchange all the notes above five *sen* for the new currency (and the notes below that denomination in 1874). The redemption of the clan notes was completed in June, 1879. This conversion of the clan notes was one of the most important measures undertaken by the new government. It facilitated the free exchange of commodities and developed the national economy, extending the circulation of the government notes, increasing the confidence of the people in the government, and, finally, unifying the currency system of the Empire.

*Dai-Jo-Kwan-Satsu* (Government Notes).—The Imperial government issued its note in 1868 with the intention of continuing it in circulation for thirteen years, at the end of which time the issue was to be converted into coin. Later,

when the people began to discredit the notes and their value consequently fell, the term was shortened to five years. If the notes were not redeemed at that date, interest at the rate of 6 per cent was to be paid upon the whole amount in circulation. At the end of the fifth year, 1873, with the object of contracting the circulation, "Bonds in exchange for Kinsatau" (paper money) were issued, undertaking to pay 6 per cent interest on all amounts of paper currency which might be offered in exchange for these bonds. But as the credit of the paper currency was daily improving, while there was a general need for capital for carrying on business, there was very little demand for these bonds. The amount and denominations of the government notes issued from May, 1868, to December, 1869, were as follows:

Kinds.	Amount.
Rio 10 bill .....	Rio 23,032,000
Rio 5 bill .....	Rio 5,969,000
Rio 1 bill .....	Rio 15,485,000
Bu 1 bill .....	Rio 5,161,000
Shu 1 bill .....	Rio 1,050,000

*Mim-Bu-Sho-Satsu* (Civic Department Notes).—This form of currency was issued in accordance with the ordinance of September, 1869, by the Civic Department.<sup>7</sup> It was of small denominations, namely: two-Bu (50 sen), one-Bu (25-sen), two-Shu (12.5 sen), and one-Shu (6.25 sen). The full amount of the currency was not to exceed 7,500,000 *rio*.

These notes stood in the relation of subsidiary currency to the government notes; the decree describing the object of the issue, stated: "Owing to the fact that the existing currency consists only of paper notes of large denominations, the people of the remote towns and villages may suffer from inconvenience in the daily transaction of business. Hence,

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<sup>7</sup> Afterwards the Civic Department was divided into the Departments of Finance, Interior and Justice.

the Bureau for Commerce will proceed to issue notes of smaller denominations, and the notes of larger denominations which are exchanged for the smaller shall be destroyed.”<sup>8</sup>

The question arises, in view of the fact that both this currency and the government notes were issued by the same central government, why one was called “Government notes” and the other “Civic Department notes”? The answer is, that the government declared in May, 1868, that the “amount of the notes will be limited to 3,250,000 *rio*, and after that amount is reached, the plate used for the issue will be destroyed . . . .” The government could not change the promise thus made to the public, but ordered the department in which the financial function of the government was exercised to issue these subsidiary notes in the name of the department.

- The total amount of notes issued of the various denominations was as follows :

Denominations.	Amount.
Two-Bu bill .....	3,683,000 <i>rio</i>
One-Bu bill .....	2,407,000 <i>rio</i>
Two-Shu bill .....	1,093,000 <i>rio</i>
One-Shu bill .....	315,000 <i>rio</i>

The issue began in September, 1869, and was completed in October, 1870; in October, 1880, with the government notes, it was exchanged for the “New Paper Money.”

*O-Kura-Sho-Dakkwan-Sho-Ken* (Treasury Convertible Notes).—These notes were issued by the ordinance of October, 1871, in the name of the Mitsui Company.<sup>9</sup> The object

<sup>8</sup> *Kem-Po-Rui-Hen*, vol. ix, p. 40.

<sup>9</sup> The House of Mitsui was founded early in the 17th century in Kyoto by a man of that name coming from Echigo province in the West. Contradictory stories are told as to which member of the family first brought it into prominence by his energy and skill. Romance has colored its earlier days; but at any rate no long time elapsed before prosperity began to visit the house, and after one or two generations, its branches extended to all parts of the country, the chief stores being six in number, one for each branch of the family. The house had taken the name of “Echigo House;” and

of issuing these notes was twofold; primarily, to defray government expenditures, and secondarily, to buy in all the old coins which were floating in the country.

The year 1871 marks the abolition of the Han (clan) and the redivision of the country into prefectures; the administrative sphere was correspondingly extended, causing ordinary and extraordinary expenditures to be increased to 57,730,000 *rio*. On the other hand, owing to the fall in price of rice,<sup>10</sup> which constituted the principal source of the government revenue, the income from both ordinary and extraordinary sources, did not exceed 32,610,000 yen, leaving a deficit of 25,120,000 yen.

To make up this deficit two measures were considered: (a) the issue of more inconvertible notes, and the sale of the coins (*Ni-bu-kin*) which were deposited in the Treasury from time to time. Neither of these measures seemed practicable; for the former would be contrary to the decree announcing that no further issue would be made and the latter was undesirable at a time when the government was planning to establish a new coinage system. The value of specie fell very low and the people disliked to use the coin. Moreover, the government was gathering all the coin possible in order to prepare a basis for a future coinage, so that the sale of such coin as the government already possessed was not to be thought of. Hence another measure was sought. This scheme was to authorize a private commercial house to issue notes and to circulate them. The adoption of this scheme had two advantages: (a) the government could succeed in raising enough to meet the deficit; (b) a large quantity of specie could be collected with comparatively little expense.

It is to be noted that the Mitsui Company acted as a gov-

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as early as the last decade of the 17th century its fame was such that Kaempfer was attracted by the extent of its commercial operations and made special mention of its achievements. Since the Restoration, this house has acted as a financial agent of the government.

<sup>10</sup> In 1871, the maximum price of rice was 4.32 yen per koku and the minimum price 1.81 yen.

ernment agent in issuing this currency.<sup>11</sup> Whenever the Treasury Department wanted money, the Company received its order accompanied by a reserve equal to one-half of the amount of notes to be issued. If exchange in specie were demanded and the demand were greater than the reserve received, the Company had the right to demand more of the government. Accounts of all transactions were subject to government inspection. In the case of destruction or loss of the measure either by fire or theft, the Company was responsible for the loss. All expenses incurred in issuing the notes were paid by the Company. For all this trouble and work, the Company was permitted to receive as compensation twenty per cent of the total issue, for their own use without reserve.

This compensation was clearly excessive. While the notes were in circulation, the Company had the right of using for their own benefit one-fifth of all issued. The notes being convertible, the Company was obliged to have some reserve, but so long as there was not much demand for redemption, it could use the government reserve, if need be, since there was no definite rule for the exchange for coin, nor for the circulation of certificates whereby the notes in the use of the government were distinguished from those of the Mitsui Company. Again, the expense of issuing the certificate was slight and, moreover, because of its privilege, the credit of the Company became very great and its profits extraordinary.

It was not long, however, before the government found out that the compensation of the Company was too much for the service rendered. In 1872, the government established the system of deposit for exchanging the notes. Since then, the contract with the Mitsui Company has been modified, and now, although it still has the use of one-fifth of the total notes issued, yet the Company is obliged to exchange one-fifth of all notes presented for redemption. After

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<sup>11</sup> *Mei-Ji-Sei-Shi*, vol. i, p. 240.

five years, the Company was obliged to pay back twenty per cent of all the notes issued to the Treasury Department, and during that length of time the Company was required to deposit twenty per cent of the sum in specie, on which the government paid reasonable interest. In short, according to this new contract, the compensation of the Company was the privilege of borrowing money without interest for a security bearing interest.

The original intention of the government was to limit the amount of the notes to 3,000,000 yen; but as its financial difficulties were critical and the issue was intended to meet the deficit in public revenues, the government issued more than was originally intended. The amount of notes issued from October to December, 1871, reached 4,772,000 yen, and during January and February, 1872, 2,028,000 yen, making a total of 6,800,000 yen. Notwithstanding the enormous increase of the issue, their credit did not decline; for at the beginning of the issue the government promised to exchange notes for coins on demand and to destroy the notes redeemed. Moreover, since it was at a time when the old coin was unpopular, the people preferred the use of the paper money to that of specie. In issuing these convertible notes, the government was certainly successful. But subsequent policies caused the notes to fall into great disfavor, from the evil effect of which the country suffered for many years.

If the government had followed the plan originally stated, destroying the notes exchanged, the entire issue would have disappeared and the economic condition of the country would have been greatly bettered. But contrary to what was originally intended, when the notes redeemed reached one-fifth of the total issue (October, 1871, to March, 1872), the government, instead of destroying redeemed notes, returned them again to circulation. Again, when the amount of new coin reached 51,990,000 yen, the government could have accomplished the resumption of specie payments as originally intended. But instead of attempting this plan, it ex-

changed the notes for the "New Paper Money" which was itself inconvertible money. Thus, the paper money which was originally issued with the promise of convertibility lost that quality and was added to the enormous amount of inconvertible paper money already in circulation. All this mismanagement was based on the belief of the officials that as the notes could be circulated at par value with coin, whether convertible or inconvertible, conversion into coin upon demand was unnecessary.

*Kai-Taku-Shi-Dakkwan-Sho-Ken* Colonial Department Convertible Certificate).—This issue, as the one preceding, was emitted in accordance with the ordinance of May, 1871, by the Treasury Department in the name of the Mitsui Company.

The object of the issue was the promotion of the industry and commerce of the Northern Island (Hokkaido). The important question, how to open the "Island of the Barbarians," had been agitated from time immemorial. With the Restoration and the nationalization of the Empire, the need of settling this question was very keenly felt. This island, as the northern gate of the Empire, required a garrison for defense from northern invasion. Having a large population relative to its area, the government required all its arable land for cultivation, while experience proved that the island was covered with valuable natural treasure.<sup>12</sup> Accordingly, soon after the new government was organized, the question of the colonization of the Hokkaido was considered. It was a great undertaking, requiring large funds in order to attain any success. Owing to its financial embarrassment, the government could not appropriate any additional revenues for this purpose. In 1872, Gen. Kuroda, the head of the Colonial Department, with the consent of the Treasury Department, proposed to issue convertible certificates amounting to 2,500,000 yen, and the proposition was accepted by the Council of State.

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<sup>12</sup> Rein, Industries of Japan, p. 324.

The issue of these notes was similar to that of the Treasury notes, but with certain modifications. As the Colonial Department required the notes, they were issued by the Mitsui Company upon order of the Treasury Department, against a reserve equal to one-third of the amount issued. The time of circulation was to be ten years, during which term the Colonial Department was to prepare for redemption. If no steps were taken for this purpose, the Treasury Department was authorized to withhold such amount from the annual appropriation of the Colonial Department. All the expenses of issuing the certificates were to be borne by the Colonial Department. Both Treasury and Colonial certificates were, however, poorly manufactured, and were easily counterfeited. Hence the government decided to stop their circulation after May, 1877, and they were exchanged for the "New Paper Money."

*Shin-Shi-Hei* (New Paper Money).—The object of issuing this paper money was twofold; to prevent the circulation of counterfeit money and to unify the currency system. In 1870, when the paper money had begun to win the confidence of the people and the solid basis of the currency system was almost laid, the country was greatly alarmed by the appearance of numerous counterfeit bills of various kinds. This spurious money was emitted not only by natives, but also by Chinese counterfeiters. There had been many forgeries committed while the "clan governments" were still in power, but that was in a time of great confusion, when the centralization of power was not fully consummated, and the government could not take any strict measure against the offense. But now when the central government was fully recognized by the people throughout the country, the authorities determined to put an end to counterfeiting and all the evils connected therewith. Accordingly the government issued private instructions addressed to local authorities throughout the Empire as follows: "Notwithstanding the fact that the government had already made the announcement that it would convert paper money into specie, we are

surprised at the appearance of counterfeit bills. This forgery is a great evil which endangers the prosperity of the nation. Therefore, careful investigation should be made and those persons who have committed the forgery should be judged according to the law. Search for the spurious money, examine it with care, and if proved to be counterfeit, destroy it and report to the Civic Department concerning the matter. Manage the affair privately, for if the public know this fact, the people may refuse to receive paper notes, thus preventing again the circulation of any kind of paper currency.”<sup>13</sup>

Soon after these instructions were issued, knowledge thereof became public. So the central government counselled the public to be on the watch for spurious money, and established examining offices at Tokyo, Osaka, Kobe and Yokahama, and afterwards at the seat of each prefectoral government, in order to prevent the continued circulation of the counterfeit notes. Many persons were sentenced for participation in the forgery. The Chikuzen province was punished severely. Kuroda, the chiji,<sup>14</sup> head of the provincial government, was dismissed from office owing to some of his clan having been implicated in counterfeiting the paper money to a considerable extent in their province; five were condemned to death and four to ten years’ penal servitude.<sup>15</sup>

The period of counterfeiting which at one time placed the country in a very dangerous position, but which was suppressed within a short time, directed the attention of the authorities to the fact that this was due to two defects

<sup>13</sup> *Mei-Ji-Sei-Shi*, vol. i, p. 320.

<sup>14</sup> The head of the local authority.

<sup>15</sup> F. O. Adams, *History of Japan*, vol. i, p. 255. Concerning foreign criminals, the government discovered that four subjects of the Chinese Empire, named Go-Kitsu-ho, So-sho-ho, Li-Shi-Kong and Chon-yie-Kyoku, were implicated in the forgery. The Chief of Police, Chin-fuku-kun, was notified and directed to punish them and to destroy the thirty plates of counterfeit money, and the head of the provincial government was requested to take some measure for prevention of future forgery.

in the existing paper money, namely, its imperfect manufacture rendering it easy to counterfeit, and the poor material of which it was made rendering it non-durable. These facts caused the government to consider a change in the existing paper money and the issue of a perfect currency, thus preventing any successful forgery in the future. Just at that time, a German establishment, Dondorf by name, located in Frankfort-on-the-Main, advised the government through Herr von Blank, German Minister to Japan, that the lithographed paper money issued by their establishment would never be forged, and that if a first order were placed with them, they would teach the art to Japanese artists. The Japanese government accepted the offer, and a contract for paper notes amounting to 5,000,000 yen was completed in October, 1871, and artists were sent in January to learn the art of lithography.<sup>16</sup>

A few months later the authorities found that in consequence of the strict measures adopted for the prevention of counterfeiting, the credit of the government notes was restored and the number of spurious notes was greatly diminished. Accordingly the officers in charge of the financial affairs of the government considered it unnecessary to redeem all the old notes immediately, but proceeded at once to call in the clan notes. This proposition was accepted by the Councillors of State, and the proclamation of December, 1871, was issued:

"Owing to the poor manufacture of paper money, there are many who have lawlessly attempted to counterfeit the government notes, and there are also gold, silver and copper bills in present circulation, which have been issued by divers clans. These elements create much inconvenience, as well as positive loss in the transaction of business. Therefore, although the government has been burdened with enormous outlay yearly, it has issued new paper money of excellent quality of the following denominations: 100 yen, 50 yen,

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<sup>16</sup> History of Japanese Currency, vol. xv, p. 35.

20 yen, 10 yen, 5 yen, 2 yen, 1 yen, 50 sen, 20 sen, 10 sen, and 5 sen. Of these, 1 yen, 50 sen, 20 sen, and 10 sen will be issued and circulated from February 15, 1872. As soon as issued, all the old government notes and clan notes will be taken in exchange for them."<sup>17</sup>

In 1872, when the Han (clan) was changed into the Prefecture, the government determined to exchange all clan notes and placed a second order for 50,000,000 yen. Afterwards, the original lithographic plate was transferred from Germany to Japan and the reserve notes were issued at the "Paper Currency Bureau" to the amount of 3,537,000 yen.

After these two original objects were accomplished, the government sought to exchange all government notes and certificates. The various purposes for which these so-called "New German paper notes" were issued, are summarized in the following table:

Purpose of Issue.	Amount.
Conversion of old notes.....	52,897,000 yen
Conversion of clan notes.....	22,618,000 "
To defray colonial expenses.....	1,100,000 "
Conversion of Treasury certificates.....	6,784,000 "
Conversion of Colonial certificates.....	2,463,000 "
To cover deficit .....	8,525,000 "
To cover expenses of suppressing Rebellion of 1877 .....	27,000,000 "
	121,387,000 yen

The first purpose of issue, conversion of old government notes, was to exchange Treasury and Colonial Department certificates for the new paper money.<sup>18</sup> It was argued that the issue of 100,000,000 yen had been ordered, although the total sum of government,<sup>19</sup> civic<sup>20</sup> and clan notes to be exchanged was not more than 85,000,000 yen; that there existed, therefore, an excess of 15,000 yen; that if this excess were devoted to the redemption of other outstanding notes amounting to 9,300,000 yen, Treasury notes of 6,800,000 yen and Colonial certificates of 2,500,000 yen, there would

<sup>17</sup> Kem-Po-Rui-Hen, vol. ix, p. 25.

<sup>18</sup> See p. 52.      <sup>19</sup> See p. 42, above.

<sup>20</sup> See p. 45, above.

then be no need of expending specie for their redemption. Inconvertible certificates were thus exchanged for convertible notes.

The use of paper money by the government was favored by the fact that the certificates when issued were received by the people very favorably and circulated extensively, very few notes being presented for redemption. Moreover, as notes of the smaller denominations circulated among the mountaineers and fishermen, the wear and tear was great and it seemed impossible that the amount which was originally intended for circulation would last ten years. In any event, as the island was gradually opened and the wilderness became a taxable area, it seemed no difficult task to redeem the notes with the coin paid in as taxes in the island. Hence, holding the sum of 1,800,000 yen, which was lent to the people of Hokkaido, as a reserve, the government issued additional notes to the amount of 1,100,000 yen.

In the year 1871, when the country was redivided, the public expenditure became very great, and the government suffered from financial embarrassment. Whenever a deficit occurred, the Bureau of Ways and Means would borrow temporarily from the Bureau of Currency to meet the deficiency, with the intention of repaying the amount when taxes were received. Now this seems very similar to the treasury certificate system. But, in the first case, there was a definite term within which the debt would be paid, usually not longer than a fiscal year, whereas the system adopted by the Japanese government provided no definite term for liquidation. The Minister of State for Finance simply became a debtor of the Bureau of Currency, and a creditor of the Bureau for Revenue; the liability of debtor and the right of creditor rested upon one person, and there was no specific obligation to pay at all. This mode of transaction was resorted to nine times during the five months from October, 1872, to February, 1873, and the amount thus borrowed was 8,000,000 yen. In 1874, this debt was converted into the "new paper notes."

At the beginning of the new era of the Meiji, the government adopted the policy of interference in commerce and industry. It went so far in this direction that it was said that the government monopolized all the industries of the country. This policy cost the government 500,000 yen, which necessitated another issue of paper money.

In 1877, when the country had entered upon its prosperous career, the development of national life was suddenly checked by a civil war, which left the country in a serious condition. To meet the enormous expenditure incident to the war, the government having no other source from which it could draw, circulated paper notes to the value of 27,000,000 yen from the reserve currency which was to be used for exchanging "worn-out paper notes." In the same year it was decreed that this reserve currency should circulate for fifteen years, and at the end of that period be exchanged for bonds.

*Kai-Ryo-Shi-Hei* (Improved Paper Money).—The new paper money which was claimed to be perfect in manufacture was found, a few years after it was circulated, to be imperfect in three particulars: (1) As the notes of all denominations were of the same size, differing only in the figure which indicated the denomination, it was very difficult to distinguish one denomination from the other. (2) Owing to the character of the paper, the color used in the lithographic print was not absorbed sufficiently to prevent it from being changed very easily. (3) Owing to the poor texture of the paper, the notes were easily torn and were soon worn out. It is reported that 100,000 yen worth of notes were brought to be exchanged in one month.

For these reasons, the government ordered the Financial Department to issue another note known as the "Improved Paper Money," which should remedy these defective qualities in the "New Paper Money."

## CHAPTER IV

### REDEMPTION OF PAPER CURRENCY

Although all the notes described in the preceding chapters are included under the name of "Government Notes," yet in regard to their characteristics and their objects, the various issues may be divided into the two following classes:

A. Those issued for meeting a temporary deficit, because of the excess of expenditures over the revenues of the government; but forming no addition to the permanent debt of the government.

B. Those issued for defraying the government expenditure and destined to become a permanent debt of the government.

It is not unusual in financial administration for the expenditure and revenue to be unequal; sometimes the former is greater than the latter; while at other times the reverse is the case. "Temporary deficits and surpluses cannot be avoided. In the management of a large financial organization complete equalization of receipts and expenditure could hardly ever be obtained, or, if it were, would be due to chance."<sup>1</sup> Hence governments usually provide some method of borrowing which may be utilized in case of temporary inequality between expenditure and revenue. The Japanese government having no central banks, adopted the system of "reserve paper notes," considering that "this method is better than issuing a loan, for by it, the government is free from paying interest and free also from the trouble of collecting the loans." But in 1877 and the four years following, a succession of events necessitated a large amount of extraordinary expenditure and the government was forced to issue an ex-

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<sup>1</sup> C. F. Bastable's Public Finance, p. 535.

cessive quantity of notes. Consequently, at the end of 1881, the depreciation of the paper notes was so great that the government was compelled to undertake their reform.<sup>2</sup>

This important work was left to the ministry of Count Matsukata. Soon after entering upon his office, the Count found that the "reserve notes" in circulation amounted to 10,430,000 yen.<sup>3</sup> He took measures for the redemption of the "reserve notes," and in order to accomplish his plan carried out the following reforms:

1. In the first place, he remodelled the method of receiving revenue and of defraying expenditure. Hitherto it had been the custom to keep the taxes paid by the people in the treasury of the local authorities for some months before transmitting to the central government. On the other hand, financial regulations required the Financial Department to pay in advance one-twelfth of the appropriation for the different departments of the central government, and one-fourth of that for the provincial government.<sup>4</sup> Thus some reserve was rendered necessary.

Count Matsukata changed the system so that the surplus of one province could be used to cancel the deficit of another. He ordered all the local governments to report to the Financial Department every other day, by telegraph, the amount of money in their local treasuries. Thus he was enabled to use a surplus existing in one part of the Empire to balance a deficit in another.

2. Count Matsukata endeavored also to replace the "reserve notes" with specie. The larger part of the reserve was in the form of loans and government bonds, and only the sum of 8,000,000 yen was held in specie to effect the conversion of the bills. Hence he resolved to augment the amount of specie. To accomplish this, he sold the bonds and arranged for the payment of all loans so that the reserve consisted entirely of specie. When the government should

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<sup>2</sup> Report of the Minister of Finance, p. 73.

<sup>3</sup> Count Matsukata's Report of 1890, p. 75.

<sup>4</sup> Ministers' Report, p. 10.

have a deficit, the coin reserve was to be used instead of the old paper notes.

3. The third measure taken was the diversion of the specie paid in for building the Middle Provincial Railroad to the temporary needs of the government. In 1883, it was determined to lay a railroad joining the two capitals, Tokyo and Kyoto, through the Middle Provinces. Bonds were offered for sale in the same year and a large amount of specie was thus brought into the central treasury. The government was able to use this sum for tiding over the temporary emergency until the carrying out of the project demanded the money. Through these measures, all the notes of Class A were converted into specie in 1883.<sup>5</sup>

For the reasons mentioned in the preceding chapters, the amount of inconveritible notes, in new paper money, reached in 1878 the following enormous figures :

Amount issued for the conversion of old government notes and bills.....	61,367,000 yen
Amount issued for the conversion of clan notes .....	22,908,000 "
Amount issued for meeting general defi- ciency .....	8,525,000 "
Amount used for the expenses of the Insur- rection .....	27,000,000 "
Total .....	119,800,000 <sup>6</sup>

We shall now consider how the government managed this enormous amount of inconveritible notes. In 1873, when it was decreed that the old notes should be exchanged for the new coins and that if all were not so exchanged, six per cent interest should be paid on those continuing in circulation, the government attempted the fulfilment of these promises and took several measures for the redemption of the paper notes.<sup>7</sup>

The first of these was the issue of the "Bond in exchange for Paper Money," and the second, the establishment of

<sup>5</sup> Count Matsukata's Report of 1890, p. 78.

<sup>6</sup> See Compendium of the Japanese Finance, vol. ii, p. 240.

<sup>7</sup> Cf., p. 30.

national banks with the right to issue convertible certificates. According to these regulations, national banks were established, each of which should have a capital of at least 50,000 yen. Six-tenths of the capital was to be deposited in paper money at the Financial Department and the remaining four-tenths was to be held in specie as a reserve for the redemption of the bank's notes. Then the Financial Department issued "Bonds in exchange for the Notes," bearing interest at the rate of six per cent per annum payable in gold, which the banks were required to retain as security for the note issue. The amount of the notes could not exceed the security possessed by the bank. Concerning the advantages of issuing the "Bonds in exchange for Paper Notes," Count Okuma says, "This plan has two advantages; in the first place, when the rate of interest falls below six per cent in gold, owing to an excess of paper money in circulation, the holder will be at liberty to exchange them for public bonds, while the government would be enabled to withdraw enough paper money to maintain the circulation at an amount suitable to the requirements of the country; and in the second place, when the paper currency falls below par, the holder will be able to obtain bonds, the interest of which will be payable in specie."<sup>8</sup>

These were really the first steps taken by the government towards the redemption of the paper currency, but the pressing necessity for the conversion of "clan notes" and the outbreak of the Kiushu Insurrection compelled the government to issue additional notes to the amount of something over 31,000,000 yen and thus abandon the plans for redemption.

During the five years from 1874 to 1879 the government notes in circulation increased to a considerable amount. In the early part of the period, as there was only a limited issue of the notes, they circulated at par with specie,<sup>9</sup> but,

<sup>8</sup> Okuma's Review, p. 14.

<sup>9</sup> Of course, silver being the only money used in Japan's foreign trade, there were fluctuations in the value of silver according to the shifting relation of imports to exports.

later, owing to the inconvertible character of the notes and to their over-issue after 1877, they began to fall in value. For a time the result disturbed the internal as well as the foreign trade.

The first effect of the depreciation was the excess of imports over exports, and the second was the outflow of the monetary metals. Both of these results are shown in the following tables:<sup>10</sup>

TABLE I.  
EXPORTS AND IMPORTS OF COMMODITIES.

Year	Imports yen	Exports yen	Excess of Imports yen	Excess of Exports yen
1872 .....	26,174,000	7,026,000	9,148,000	.....
1873 .....	28,107,009	21,635,000	6,471,000	.....
1874 .....	23,461,000	19,317,000	4,144,000	.....
1875 .....	29,975,000	18,611,000	11,364,000	.....
1876 <sup>11</sup> .....	23,964,000	27,711,000	.....	3,746,000
1877 .....	27,420,000	23,348,000	4,072,000	.....

TABLE II.  
IMPORTS AND EXPORTS OF PRECIOUS METAL.

Year	Imports yen	Exports yen	Excess of Imports yen	Excess of Exports yen
1872 .....	3,691,000	4,480,000	.....	789,000
1873 .....	3,080,000	5,122,000	.....	2,042,000
1874 .....	1,071,000	13,995,000	.....	12,923,000
1875 .....	298,000	14,663,000	.....	14,365,000
1876 .....	8,267,000	10,675,000	.....	2,408,000
1877 .....	2,173,000	9,441,000	.....	7,267,000

Notwithstanding these clear evidences of the effects which we have ascribed to the over-issue of the paper notes, most of the financiers of the time attributed this alarming inequality between imports and exports to the scarcity of capital and sought a remedy in the issue of more bank notes. With this end in view revision was made of the Bank Regulation by which more inconvertible bank notes were issued. The government required the banks to deposit in the Financial Department government bonds bearing four per cent interest to the amount of eight-tenths of its capital, leaving

<sup>10</sup> Count Matsuka's Report of 1890, p. 85.

<sup>11</sup> The excess of imports in the year 1876 was due to the failure of the silk crop in the European countries, and the consequent increased exports of silk from Japan.

only two-tenths of the capital in specie. Upon the basis of this specie the bank was allowed to issue notes to the amount of the deposited bonds. This measure indicates that the government had at that time abandoned entirely its first idea of redeeming the inconvertible notes, by allowing the exchange of bank notes for government notes, which were themselves inconvertible. Thus, during three or four years, there were added to the amount of inconvertible paper money already in existence over 100,000,000 yen.<sup>12</sup>

An incidental factor in the adoption of this measure was the commutation at this time of the hereditary pension of the military classes into "Public Debt Bonds." "This class beyond the functions which had appertained to it under the régime that had passed away, was ignorant of the ordinary means of gaining a livelihood, and now being suddenly relieved from those functions, was in great danger of falling into a state of indigence and perhaps into pauperism, unless some calling could be found for its members. The government consequently sought a means by which the military class could turn their "Public Debt Bonds" to account in obtaining a livelihood."<sup>13</sup> These circumstances, the demand for more capital, and the relief of the military class led the government to revise the Bank Regulations and to issue the additional inconvertible notes.

The results of this measure were felt in the finances of the country soon after the revision took place in 1878. There ensued further depreciation of the paper money, an excess of imports over exports, an efflux of silver and gold, and a rise of general prices. These phenomena are shown in the following tables:

TABLE I.  
AMOUNT OF PAPER NOTES IN CIRCULATION

Year	Class A yen	Class B yen	Bank Notes yen	Total yen
1877 .....	11,961,000	93,835,000	13,352,000	119,149,000
1878 .....	19,618,000	119,800,000	26,279,000	165,697,000
1879 .....	16,118,000	114,190,000	34,046,000	164,354,000
1880 .....	16,528,000	108,412,000	34,426,000	159,366,000
1881 .....	13,000,000	105,905,000	34,396,000	153,302,000

<sup>12</sup> See the Compendium of the Japanese Finance.

<sup>13</sup> Count Okuma's "Review," p. 29.

TABLE II.

DEPRECIATION OF THE PAPER NOTES IN COMPARISON WITH SILVER. (PRIOR TO SEPTEMBER, 1879, IN THE MEXICAN DOLLAR COIN AND THEREAFTER IN JAPANESE YEN COIN).

Year	Jan. yen	Feb. yen	Mar. yen	Apr. yen	May yen	June yen	July yen	Aug. yen	Sept. yen	Oct. yen	Nov. yen	Dec. yen	Aver. yen
1877 .....	1,013	1,037	1,026	1,034	1,015	1,024	1,034	1,052	1,053	1,043	1,037	1,030	1,033
1878 .....	1,049	1,075	1,105	1,076	1,066	1,068	1,068	1,078	1,110	1,143	1,131	1,217	1,099
1879 .....	1,217	1,246	1,261	1,247	1,161	1,102	1,121	1,172	1,158	1,233	1,286	1,336	1,212
1880 .....	1,365	1,389	1,435	1,549	1,373	1,367	1,378	1,387	1,489	1,651	1,686	1,659	1,477
1881 .....	1,728	1,746	1,774	1,795	1,620	1,625	1,628	1,629	1,690	1,734	1,692	1,695	1,696

TABLE III.

## IMPORTS AND EXPORTS.

Year	Imports yen	Exports yen	Excess of Imports yen
1877.....	27,420,000	23,348,000	4,072,000
1878.....	32,874,000	25,988,000	6,886,000
1879.....	32,953,000	28,175,000	4,777,000
1880.....	36,626,000	28,395,000	8,231,000
1881.....	31,191,000	31,058,000	132,000

TABLE IV.

## EXPORTS AND IMPORTS OF THE PRECIOUS METALS.

Year	Imports yen	Exports yen	Excess of Exports yen
1877.....	2,173,000	9,441,000	7,267,000
1878.....	2,189,000	8,328,000	6,139,000
1879 .....	3,134,000	12,778,000	9,644,000
1880.....	3,638,000	13,222,000	9,584,000
1881.....	1,856,000	7,490,000	5,634,000

TABLE V.

PRICE OF RICE<sup>14</sup>

Year	Maximum yen	Minimum yen	Average yen
1877.....	5,67	4,63	5,15
1878.....	7,03	5,37	6,20
1879.....	9,37	7,05	8,21
1880.....	12,11	8,15	10,13
1881.....	11,53	9,44	10,48

As shown by the above tables, depreciation of the paper money caused by the over-issue began in 1877. At the beginning of the year 1874, silver money brought 7 or 8 sen

<sup>14</sup> The price of rice is selected because of its universal use throughout the country; the price given is that per *koku* in the Tokyo market.

premium, and at the end of the year the paper depreciated and the difference between paper and silver was 22 sen. This phenomenon called the attention of the financiers to the importance and necessity of some action. They failed, however, to see the real cause of the premium. They thought the depreciation of the paper due to the appreciation of silver; that the appreciation of the metal was caused by the unfavorable balance in the foreign trade, and that this, in turn, was owing to scarcity of capital which hindered industrial enterprises. Hence, the measures adopted by the government were not intended to contract the inconvertible notes but rather to prevent the appreciation of silver money.

In 1879 the premium on silver went up as high as 25 per cent. In order to stop the appreciation of silver, the government authorized two banks at Tokyo, Mitsui and Second National Banks, to sell silver to the amount of 2,400,000 yen from the Reserve fund.<sup>15</sup> This measure caused silver to depreciate slightly; it had been at 16 sen premium, but now fell to 12 sen. When the sale stopped silver went up again to 23 sen, then to 33 sen, and in 1880 it rose as high as 54 sen premium. In that year, the government ordered three banks (First, Second and Mitsui) to sell silver to the amount of about 6,000,000 yen.

Silver, as a result, fell down to 37 sen premium, but in the autumn of the same year it went up to 48 sen. Having thus failed in all its attempts to prevent the appreciation of silver, the government abandoned the plan of selling silver and determined to accomplish its purpose by the more direct method of contracting the paper currency.

Two measures looking to this end were immediately adopted: 1. An increase in the tax on liquor. 2. A reduction in the outlay of the government. By the first measure the Financial Department was able to add 6,000,000 yen and by the second 3,500,000 to the reserve which was intended for the redemption of the paper currency.

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<sup>15</sup> Mei-Ji-Sei-Shi, vol. ii, p. 234.

But the appreciation of silver did not stop and in 1881 silver was at 79 sen premium, the maximum limit of the appreciation. The effect of the premium upon industry and commerce was alarming. The revenue of the government decreased to one-half its nominal value; many of those whose livelihood depended upon salaries and pensions were reduced to want. The rate of interest rose and the government bonds fell in value. All commodities rose in price, and the effect of the high price of rice was especially severe upon the common people, as it is the chief product and the staple food of the Japanese people. The farmers alone are supposed to have been benefited by the appreciation of silver. "In the year 1881," says Hon. T. R. Jennigan, the United States consul at Osaka, "nearly every thing in Japan had greatly risen in price, and as the great majority of the people considered only price and not value, and ignored the wholly fictitious nature of the advance, it is not surprising that they imagined it both solid and likely to endure, and thought themselves very prosperous and quite justified in launching into much extravagant expenditure. Accordingly, new farm houses sprang up in every province; new clothes and ornaments were freely purchased, landed property came in great demand . . . and in general everybody rejoiced in hope and a sense of prosperity."<sup>16</sup>

Before long, the government awoke to the danger and renewed its efforts to diminish the note circulation. This important matter was left to the ministry of Count Matsukata.

In October, 1881, Count Matsukata was appointed Minister of State for Finance and immediately undertook to contract the currency. The first step he took was to segregate as large a specie reserve as possible. With this in view, Count Matsukata ascertained how much specie the government could devote to the purpose. In his report on the result of this investigation, he says, "We have an average

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<sup>16</sup> U. S. Consular Reports, vol. xix, No. 68, p. 655.

annual surplus of revenue amounting to 7,000,000 yen, and a reserve already made, amounting to 36,438,000 yen, making a total 43,438,000 yen which we can use for the management of the paper currency." "If," he continues, "we manage our annual income and reserve properly, before many years pass we can accomplish the redemption of all inconvertible notes."<sup>17</sup> From this time on, the government on the one hand contracted the paper notes and on the other, increased the reserve, with the intention, ultimately, of changing the irredeemable paper notes into convertible certificates. To accomplish this aim, the government, on the advice of Count Matsukata, on October 10, 1882, established the "Central Bank of Japan."

The object of the establishment of the Bank of Japan is described in the memoir of Count Matsukata. He says, "The existing banks (260 in number, including all branch offices) scattered over the country have no business connection with each other; and the feudal barrier still separates one bank from another. Consequently, specie to the value of 50,000 yen cannot be utilized, and thus there is no way for extending the credit of the banks. Hence, although the amount of bank notes issued reaches the enormous sum of over 34,000,000 yen, yet the country has been feeling the insufficiency of the medium of exchange.

"If this were the age of feudalism such an institution might have been of some service to society. But, fortunately, that age has passed and gone. By this time the central government has been formed and all the provincial governments have been established, bearing a definite relation to the central government. But sad to say, the banking system, which is the most important factor of the financial welfare of the country, is not in accord with the centralization of the government.

"Accordingly, in order to save the country from an unbalanced situation in its political and financial system, there

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<sup>17</sup> Count Matsukata's Report of 1890, p. 123.

is left but one measure, that is, the establishment of the 'Central Bank of Japan.' The circulation of the currency is like the circulation of the blood, and what keeps up the circulation is the heart. The central bank is the heart of the currency circulation of a country, without which the finances of the country cannot be successfully administered.”<sup>18</sup>

This memoir was accepted unanimously by the members of the Cabinet, and the “Regulation of the Bank of Japan” was proclaimed June 27, 1882. The “Regulation” may be summed up as follows:

1. The object of the Bank shall be: (a) To make the flow of currency in circulation easy and undisturbed. (b) To render service to the government as a financial agent in international trade. (c) To aid the government in its ordinary financial operations. (d) To monopolize the power of issuing certificates.
2. Its term of business shall be thirty years.
3. The capital of the Bank shall be 10,000,000 yen.
4. One-fifth of the authorized capital shall be paid in before the Bank may open business and the remainder at the convenience of the stockholders.
5. The business of the Bank shall not be restricted, unless it tends to unjust and disastrous speculation, in which case measures will be taken.
6. If the government sees fit, the Bank may be entrusted with the management of the financial affairs of the government.
7. The Bank has the right to issue convertible certificates, but at present it shall not exercise this right.<sup>19</sup>
8. The President of the Bank shall be a person of the First Rank and the Vice-President, one of the Second Rank.
9. The Minister of Finance shall appoint an official who shall inspect the business of the Bank.

<sup>18</sup> Count Matsukata's Memorial, dated March 1, 1882.

<sup>19</sup> This clause was added on account of the great depreciation of the paper currency.

10. The President shall present to the Minister of Finance monthly a report of the condition of the Bank.

11. The government shall invest capital amounting to one-half of the whole capital of the Bank in the stock of the Bank.

Meanwhile, the government endeavored to increase the central specie reserve through economy and the introduction of business methods, until, in 1885, it aggregated 2,806,000 yen. In May of the same year, by the act proposed by Count Matsukata, the "Bank of Japan" was authorized to issue certificates amounting to 2,645,000 yen.

Finally, in June, 1885, the government issued the following proclamation :

"The government paper notes (inconvertible) shall gradually be exchanged for silver coin, beginning in June, 1886, and those redeemed shall be cancelled. The method of making the exchange fixed by the Minister of Finance and the management thereof shall be entrusted to the 'Bank of Japan.' "

Conversion began on the date fixed by the decree, and owing to the general tranquillity during the four years following, combined with the industrial development and commercial prosperity of the realm, the measure was carried to a successful termination. The amount of the specie, bonds and certificates held against the convertible notes in 1890 is shown in the following table :

Credit	yen	Debit	yen
Certificates.....	77,615,000	Government Notes.....	40,065,000
Specie.....	54,976,000	Bank and National.....	26,391,000
Bonds .....	22,659,000		
Total.....	155,230,000	Total.....	66,456,000

The next step taken by the government in the redemption of the convertible notes was the reform of the bank note circulation.

The first bank notes were issued in accordance with the Bank Regulation of 1873, and they were convertible certifi-

cates.<sup>20</sup> But in 1875 and 1876, when the balance of foreign trade was unfavorable to Japan, and, consequently, the outflow of specie was greatly enhanced, gold appreciated and there were many demands for the conversion of the paper. It became evident that if the banks continued to redeem the notes as originally planned, not only would such a course be destructive to the banks, but it would also facilitate the outflow of specie. Therefore, four banks of Tokyo appealed to the government to modify the law. Although the authorities were aware that evil effects would follow an over-issue of convertible bank notes, yet on account of the need for funds to meet the heavy government expenditures caused largely by the commutation of the hereditary pensions of the military class into a public charge, it seemed necessary to grant the banks the power of issuing convertible notes.<sup>21</sup>

For these reasons, a revision of the Regulation was made in 1876, and the bank notes, instead of being converted into specie, were redeemed with convertible government notes. The distinguishing quality of the bank note—its convertibility—was thus lost. In 1883, therefore (after the establishment of the Bank of Japan), the government began to consider the reform of the bank note circulation. Two methods were recommended to the government for accomplishing its purpose:

1. It was suggested that all the bank notes be made a liability of the Bank of Japan. As to this method, Count Matsukata said, "If the Bank of Japan had to-day enough financial strength to be able to issue convertible notes, such a method might indeed be adopted. But unfortunately such is not yet the case."<sup>22</sup>

2. Another plan considered was to permit the banks to continue as before during the term of years prescribed in the Regulation, and at the end of the period to require the banks to redeem all their notes. To this also Count Matsu-

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<sup>20</sup> Cf., p. 90.

<sup>22</sup> Count Matsukata's Report of 1890, p. 240.

<sup>21</sup> See p. 80.

kata objected on the ground that if, at the end of their term of 20 years, all of the 140 banks sold their bonds at once, a disastrous effect would be produced on the economic affairs of the country.

3. Count Matsukata proposed that all the reserves of the national banks should be transferred to the Bank of Japan and that each national bank should deposit out of its annual profits an amount of money equal to two and one-half per cent of the amount of its notes in circulation. With these funds—reserves and annual payments—the Bank of Japan should buy bonds, the interest on which should also be devoted to the redemption of the bank notes. At the end of 15 years, if there should still remain any unredeemed notes, a portion of the bonds should be sold and used for the redemption of the outstanding notes. This policy was adopted in May, 1883.

Entering upon a policy of contraction in 1882, the government firmly persisted in its measures. At the end of 1884, the paper money was nearly at par, and by 1886 paper and silver were entirely interchangeable. But this wholesome end was not and could not be thus rapidly attained without great disturbance in all other business. "The prices, of course, fell as precipitately as they had risen; with the fall in prices, distress and desolation extended over the land, and millions of people who had supposed themselves on the high road to wealth suddenly found poverty staring them in the face, while exacting creditors on all sides demanded the liquidation of debts."<sup>23</sup>

But necessity forced many to exertion and with a return to frugality and diligence, production and trade were gradually revived and prosperity returned. At the end of the annual report of 1890, Count Matsukata happily states that, "If we look back upon the financial condition of the country at the time when the government notes fell in value to their lowest point and see the consequent evil effects upon indus-

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<sup>23</sup> The U. S. Consular Report, vol. xix, No. 68, p. 654.

try and commerce, we are conscious of the sense of fear and anxiety felt at that time. But what glory to the country and what blessing to the people! Through the wise management and ardent zeal of the cabinet, step after step, year after year, the measure has advanced and now all the provisions for the redemption of the notes are completed."

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ECONOMICS AND POLITICS IN  
MARYLAND, 1720-1750



SERIES XXI

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ECONOMICS AND POLITICS IN  
MARYLAND, 1720-1750

AND THE

PUBLIC SERVICES OF DANIEL DULANY  
THE ELDER

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## CONTENTS

	PAGE
CHAPTER I.—CONDITIONS AND CONTROVERSIES BEFORE 1730.....	7
II.—COMMERCE AND CURRENCY.....	28
III.—PUBLIC SERVICES OF DANIEL DULANY THE ELDER..	47
IV.—THE TOBACCO INSPECTION CONTROVERSY.....	67
V.—DULANY AND IMMIGRATION.....	76



# ECONOMICS AND POLITICS IN MARYLAND, 1720-1750

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## CHAPTER I

### CONDITIONS AND CONTROVERSIES BEFORE 1730

During the second decade of the eighteenth century a great change took place in the politics of Maryland—the close of the Royal government and the re-establishment of the Proprietary.<sup>1</sup> The most interesting figure in the politics of the time is that of Capt. John Hart, the worthy but hot-tempered Governor, whose régime lasted from 1714 to 1720. With apparently the best of intentions, he was always embroiled in one dispute or another, but his government left a valuable legacy to Maryland in the revised code of laws, winning thereby the praise of lawyers and historians. The factions of the Revolution of 1689 were still quarreling, and the most serious source of disquiet was the insubordination of the Roman Catholic element, which continued up to the very end of Hart's government.

The successors of Captain Hart were chosen from the Proprietary family. Charles Calvert, a cousin of the young Proprietor, ruled from 1720 to 1727; Benedict Leonard Calvert, the Proprietor's brother, was Governor to 1731; then Samuel Ogle served three separate terms, from 1731 to 1732, from 1733 to 1742, and from 1747 to 1752. During the first interval in Ogle's government the Proprietor visited the colony and ruled in person; in the second, power was in the hands of Thomas Bladen, a native of the province. From 1752, the two long administrations of

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<sup>1</sup> For a detailed account of this important period the reader is referred to Steiner, B. C., *The Restoration of the Proprietary of Maryland and the Legislation against the Roman Catholics during the governorship of Capt. John Hart*. Report No. VIII in American Historical Association for 1899.

Horatio Sharpe and of Robert Eden brought to a close the provincial history of Maryland. Eden has been the subject of a very interesting biography by Dr. Steiner, and an account of Governor Sharpe's regime is promised by another writer. To the period which intervenes between the end of Hart's government and the beginning of Sharpe's practically no recent work has been devoted, except the general treatment given by Mereness.<sup>2</sup> Of the characteristic features of this interval a brief statement is advisable.

If the departure of Governor Hart brought an end to the quarrels which had so disturbed his government, there were other disputes to fill their place. It has long been the traditional view of Maryland history that the restoration of the Proprietary rule ushered in a golden age of peace. To take a single illustration, George Chalmers, who found in the history of Virginia during the same period little either to inform the understanding or to improve the heart,<sup>3</sup> states that "the province of Maryland, prosperous yet unenterprising, will throw few materials into the collections of history during the present reign. The successive administrations of Calvert, of Ogle, of the Proprietary in person, were equally peaceful. This circumstance shows that since few causes of contest existed among a placid people, no new foundation for quarrel was laid."<sup>4</sup> Whereupon he proceeds to a contrast between Massachusetts and Maryland very flattering to the latter. But this theory of a *dolce far niente* province is far from the true one, and can be held by no one who reads the Journals of the Assembly or the Calvert Papers. For it appears beyond question that, if in the second period of Proprietary government there was less misgovernment than in the first, there was quite as much dispute. So strong, however, was the legal influence at this time—

<sup>2</sup> Mereness, *Maryland as a Proprietary Province*.

<sup>3</sup> Chalmers, G., *Introduction to the History of the Revolt of the American Colonies*, Vol. II, p. 161.

<sup>4</sup> *Ibid.*, p. 159.

and indeed through the Revolutionary period—that this opposition was expressed in a constitutional manner. If, then, Maryland was not drawn deeply into the French wars, if she experienced little difficulty with the neighboring Indians, and if her affairs were comparatively neglected by the government of England, the Lower House nevertheless attacked one after another of the prerogatives formerly possessed by the Proprietors, and by repeating, upon a miniature scale, the evolution of the mother country from a feudal state, prepared the colony for the time when it should assume the position of an independent commonwealth.

Under Charles and Benedict Leonard Calvert, neither of whom was a strong Governor, the Lower House reopened the dispute concerning the extension of the English Statutes. This was a legal controversy of the first importance, and the leadership of the Assembly throughout its course was the special work of the Attorney-General of the province, Daniel Dulany, the elder. Though, in this paper, frequent reference will be made to the English Statutes matter, detailed discussion will be reserved for fairer treatment in a separate essay. Here, however, may be noted one thing which marks this off from the other controversies of the time; namely, that it was of a doctrinaire character, and involved no financial question nor any particular prerogative of the Proprietor. Besides this, which after ten years was compromised, in 1732, there were many other quarrels, of which the most important were first, those which had an economic foundation, and comprised the attacks of the agricultural population upon the privileged classes—the lawyers, the clergy, and the officers of state; and secondly, the financial disputes—the quarrel between the Houses over the salary of the Council, and the attempts to shear one or another of the Proprietor's revenues. It should be remembered that this division is for logical arrangement, and that in point of time these quarrels were continually interwoven. In this paper, the purely

financial wrangles—the attack upon the Proprietor's revenues—will be subordinate to the agitation connected with the economic state of the province, which began somewhat before and which was active during the second quarter of the eighteenth century. Properly to understand this agitation, however, one must review briefly the economic condition of Maryland when this period opens.

Between "Leah and Rachel, or the Two Fruitfull Sisters," as Hammond calls the colonies of Virginia and Maryland, were many points of likeness. To both the Chesapeake Bay with its branching rivers served as a common highway; in both the tidewater region afforded the same soil and very similar conditions of climate. Life, and especially agricultural habits, were, therefore, very much the same, and in each province these soon resulted in the production of one staple, tobacco, cultivated by the labor of white servants or of negro slaves.<sup>5</sup>

By the settlement of Maryland, under the separate jurisdiction of Lord Baltimore, and by the jealousies which ensued, regulation of the trade in either colony was rendered difficult.<sup>6</sup> Later, the commercial legislation of England restricted the market formerly available to the planters and vexed with limitations the transportation of the crop.<sup>7</sup>

Of late years there have been attempts to minimize the evil effects of the Navigation Acts and Acts of Trade. "The complaints of the Virginian planters soon died away"; "The planters had the sense soon to leave off grumbling at the Enumeration," are the words of Professor Ashley.<sup>8</sup> This argument for the harmlessness of the

<sup>5</sup> For Virginia, see Bruce, *Economic History of Virginia in the Seventeenth Century*: throughout, and especially Vol. I, Chaps. VI and VII. Cf. also Ballagh, *A History of Slavery in Virginia*.

<sup>6</sup> Bruce, *ibid.*, Vol. I, pp. 318-319.

<sup>7</sup> *Ibid.*, Chaps. VI and VII, *passim*.

<sup>8</sup> Ashley, *The Commercial Legislation of England and the American Colonies*, in (1) *Quarterly Journal of Economics*, November, 1899; (2) *Surveys, Historic and Economic*, 1900. The facts and argument are largely based upon Beer, *The Commercial Policy of England toward the American Colonies*.

commercial legislation with respect to the southern colonies is not borne out by the evidence collected by Bruce, nor by documents which belong to the period subsequent to that of which Bruce treats. But the planters seem to have come to regard this as not subject to remedy, and to have found additional causes for complaint about the tobacco trade. One of these further difficulties, in the eighteenth century, was the control over the tobacco trade and the colonial planters by the tobacco merchants in London, who constituted a capitalist class to which the planters were continually in debt. Having them thus dependent, the merchants added charges upon charges for which, it was alleged, they had no just claim, and which, as a matter of fact, were authorized by no law.<sup>9</sup> The relation of these merchants to the Maryland trade will be discussed hereafter. Of their organization, and of the exact details of their control of the trade little has been written, for their chief importance seems to have developed in the eighteenth century, with reference to which, from the economic standpoint, the histories of Virginia are disappointingly meagre.

In spite of these difficulties, however, the production of tobacco increased enormously, and practically to the exclusion of all other commodities, from silk to sassafras. When the supply thus exceeded the demand, the price which the planters could obtain for their crops fell more and more, and thus another evil burden was added to the tobacco trade. Both in Virginia and in Maryland many attempts were made to remedy this by legislation, and after

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<sup>9</sup> These complaints are frequent, but see especially *The Case of the Planters of Tobacco in Virginia as represented by Themselves*. London, 1733. This complaint of the Virginians, signed by the President of the Council and the Speaker of the House of Burgesses attacked especially the requirement of the English Law that the merchants should be bonded for the payment of the duties on tobacco, which gave opportunity for the oppressive charges made by them upon the planters. As remedies, they proposed governmental supervision, the reduction of the duties, the substitution of internal for import duties, and better regulation of other details.

some time Virginia succeeded. In Maryland, on the contrary, at the time of the Revolution of 1689, all laws to control the production and export of tobacco had expired, failed to pass, or proved ineffective. Nor did the Royal government bring relief, for the evils of war were added to the misfortune of the planters.

The most feasible remedies which lay within the power of the colonial legislatures—for the Navigation Acts were, of course, beyond their control—were thought to be these: The establishment of a limited number of ports, to which all tobacco intended for export must be brought for inspection; the prohibition of adulteration by mixing “trash” or poor leaves with the good; and a reduction in the amount of tobacco produced. These seem simple measures, but it was not until 1747 that a thoroughly successful law was passed by the Maryland Assembly. Through a period of great political disturbance the colony suffered from an unsound economic constitution, which contrasts very markedly with the prosperity of later years. How this change was brought about, and why it was not accomplished sooner, are questions which take us for answer to the period we have been considering. While all classes complained of the wretched state of the tobacco trade, there was by no means agreement as to the proper remedies. The three measures referred to above had met with opposition, in the seventeenth century, chiefly from the smaller planters. But now, after the restoration of the Proprietary government, it was rather the large planters, the salaried officers of the government, the clergy and the lawyers who withheld acts of the nature of those proposed by the Lower House. It was not, however, the regulation of tobacco as an article of export to which these classes objected, but another characteristic of the historic plant was here involved. Tobacco had long since become the customary measure of value and medium of exchange, consequently its selling price affected the whole monetary system of the colony. It was, in this aspect, a

depreciated and inflated currency which was constantly losing in value. Therefore, those whose incomes depended on specific amounts of tobacco fixed by law for salaries or fees naturally hesitated to accept legislation which proposed to lessen those salaries or fees, on the doubtful hypothesis of a rise in the value of tobacco. We first have to notice the strenuous and successful resistance of the lawyers to the suggestion of a close limitation and definition of their fees, and then to discuss the complications which arose from the determination of the Lower House to combine with their laws for improving the tobacco trade, a limitation or reduction in the salary of the clergy and in the fees of the officers of the government.

Let us consider first the position of the lawyers. From the very beginning, the feudal land law and the commercial system of Maryland had given a legal character to the provincial politics. There was thus opportunity for the work of able lawyers, and some time before the Revolution of 1689 these had obtained that leadership in political affairs which, in New England, was so much more in the hands of the clergy.<sup>10</sup> But as in most agricultural communities, and as in mediaeval England itself, this leadership was not maintained without opposition. The planters were prone to regard the lawyers' fees as oppressive, while as early as 1669 "privileged attorneys" were considered by the Assembly to be one of the "grand grievances" of the country.<sup>11</sup> The farmers seem to have desired an "unlearned parliament" in Maryland.

In 1715 an act had been passed "for rectifying the ill Practices of Attorneys of this Province, and ascertaining fees to the Attorney-General, Clerk of Indictments, Attorneys and practitioners of the law in the courts of this prov-

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<sup>10</sup> It is stated, for instance, that the first occasion when a man really a lawyer by profession was returned as a member of the General Court, was in 1732. Washburn, *Judicial History of Massachusetts*, p. 208. In Maryland, the names of over seventy lawyers, who practiced prior to this time have been preserved.

<sup>11</sup> Maryland Archives, *Assembly Proceedings, 1666-1676*, p. 169.

ince, and for levying the same by way of execution.”<sup>12</sup> Severe fines were laid upon attorneys who should issue criminal process against any one without the record of a presentment by the grand jury, or the special order of the Governor and Council, or of the Provincial or County Courts in the province. In some kinds of process the Attorney-General was forbidden to ask any fees, and for actions in general a list of rates was drawn up, which specified a maximum charge for the service rendered. Thus, for example, for conducting any action involving not more than 2000 lbs. of tobacco, or £10 sterling, an attorney should charge 100 lbs. of tobacco, and no more.

In the Provincial Court, the fee was to be 400 lbs., in the Chancery and Vice-Admiralty Courts, 600 lbs., in the Commissary’s Court 400 lbs., in writs of error or appeals to the Governor and Council, 600 lbs.; while the Attorney-General conducting a suit in the Provincial Court should have 400 lbs. The penalty for charging greater sums was disqualification from any future practice. In 1721 and 1722, laws were passed which made punishable attorneys who by neglect of their duties caused loss to their clients.<sup>13</sup> In 1725, however, the Lower House of Assembly found the existing law insufficient, and passed an act to “restrain the ill practices of attorneys and to prevent their taking money fees.”<sup>14</sup> This seems to have been more stringent than the law of 1715, and was so bitterly opposed by the lawyers that the Governor found it advisable to call another session of Assembly the next spring. Apparently the lawyers had taken advantage of technical mistakes in the act to throw everything into confusion. The law required the attorneys to take certain oaths, and they refused to plead any cause begun before the act, by which action there was danger, said the Governor, that their clients would be non-suited. Another burdensome technicality

<sup>12</sup> Act of 1715, Ch. 48.

<sup>13</sup> 1721, Ch. 14; 1722, Ch. 12.

<sup>14</sup> 1725, Ch. 14.

was the interpretation urged by the attorneys, that though a non-resident merchant be represented by his attorney, the merchant also must take the oath. The Governor, striving to be fair-minded, tells the Assembly that the option given to the planter of paying to his attorney 100 lbs. of tobacco or 10s. currency is not good policy, and may be hard on the lawyers. He advises that a day be set by which all lawyers must qualify, "that the country may know what lawyers will and who will not conform to the laws of the country." The principle of such a law meets with his approval.<sup>15</sup> The legislature then repealed the act of the previous fall, and passed a new law avoiding the earlier mistakes.<sup>16</sup> This was to continue in force three years. At the end of this period, in 1729, the law was renewed for three years longer.<sup>17</sup>

A general law such as that of 1725 punished without discrimination, and of course aroused resistance upon the part of the lawyers. Their first action, in which they attempted to nullify the law by refusing to plead certain causes, has already been mentioned. Later, in 1725-6, the Upper House heard "the petition of some of the late practitioners of the law in this Prov<sup>ce</sup>," presented by Daniel Dulany, Thomas Bordley, Joshua George, and Michael Howard. This petition asserted that the charges contained in the preamble were unproven, at least as far as the petitioners were concerned, and prayed that they might not "be deprived of the rights of British subjects who by the laws of God and their country have an indubitable title to the enjoyment of their lives, liberty, properties and what is dearer, their reputation, until they are convict of some crime." They challenged any accusation against them and would at their own expense send for any "evidences" their accuser should name. They do not ask for higher fees nor for lessening the hardships contained in the said

<sup>15</sup> Address of the governor at opening of session, March 1720.

<sup>16</sup> 1725-6, March session, Ch. 22.

<sup>17</sup> 1729, Ch. 22.

bill, though they consider the payments thereby authorized not sufficient. "It being matter of indifference to your petitioners in their present circumstances what fees are allowed or whether any or not," they invite the Upper House to consider whether the act itself is not destructive of their privileges as British subjects and whether it can pass "without a manifest infraction of the conditions annexed by the royal charter to your legislative capacity, viz<sup>t</sup>, that the Acts you pass be consonant to reason and be not repugnant or contrary but as near as conveniently may be agreeable to the Laws, Statutes, Customs and Rights of England."<sup>18</sup>

The bill of 1725-6 became law, however, and was in force for three years. When, in 1729, it was continued for another three years, the lawyers petitioned the Proprietor against it, employing as their representative John Sharpe of Lincoln's Inn, and the Proprietor gave his dissent on the ground that such a law "was not agreeable to any known law here."<sup>19</sup> To some other laws, also, the Proprietor dissented, which elicited from the Assembly first the resolution against the use of the Proprietary veto, to which reference will be made hereafter,<sup>20</sup> and second an address to the Governor drawn up the next year by Daniel Dulany and the Committee of Laws, to inquire the reason for the dissent to so many laws.<sup>21</sup> In reply to this inquiry the Governor transmitted his own instead of Baltimore's reasons, and also two papers from England, one "Reasons against the Act of Assembly for improving the staple of tobacco," and the other a long document entitled "The Case of those that Practice the Law in Mary-

<sup>18</sup> U. H. J., Vol. 32, p. 260-64.

<sup>19</sup> Calvert Papers, MSS. No. 52, pp. 7, 8, 9. Curiously, the L. H. J. for July 30, 1729, records that Daniel Dulany, from the Committee of Laws, delivered to Mr. Speaker a bill entitled an Act to Ascertain the Fees of Lawyers and other persons practicing the law and to prevent election frauds and abuses. The bill was afterward subject to the modification of the House.

<sup>20</sup> See below.

<sup>21</sup> L. H. J., May 23, 1730.

land and of those that trade to that province." The latter begins with a rehearsal of the previous acts, then urges the mistakes of the act of October, 1725. Especial emphasis is laid upon the fact that the attorneys' fees involve tobacco as the money medium; objection is brought, also, against the requirement that the lawyers must accept a fixed equivalent between money and tobacco that makes no allowance for the great variation in the value of the latter. It is urged, further, that non-residents will suffer by the loose wording of the act.

Appended to all this is a series of questions proposed to the Attorney-General of Great Britain, P. Yorke,<sup>22</sup> and to the Solicitor-General, C. Talbot, with reference to the validity of the act. The seventh of these was "Whether the Act of Assembly now under consideration be not dissonant to reason & repugnant to the laws of England and whether the enacting of such laws be not contrary to the provisions in the charter?" To which the Crown lawyers reply in the affirmative.

Nothing daunted by the authority thus adduced against them, the Assembly in 1730 passed a similar bill.<sup>23</sup> Again the lawyers petitioned through Sharpe, and again they secured the dissent of the Lord Proprietor.<sup>24</sup> After this, it seems, no more direct attacks were made against the lawyer class. Regulation of their fees, however, was included in some of the tobacco laws, to which attention will be drawn presently.

If this analysis be correct, one may regard these attacks upon the lawyers as the expression of popular jealousy, among an agricultural people, of a class of men, necessary for their usefulness, but disliked for their high charges

<sup>22</sup> Yorke's opinion is dated April 19, 1726. The frequent reference of legal questions to the Crown lawyers, of which the case cited here is an example, is worthy of mention. The Proprietors felt the need of some authority to support their own, and the Crown lawyers were usually found on the side of prerogative, whether that was Royal or Proprietary.

<sup>23</sup> 1730, Chap. 22.

<sup>24</sup> Calvert Papers, MSS. No. 52, pp. 36-7.

for their services. Economically, the importance of tobacco as a means of payment is manifest; politically, we have a somewhat curious state of affairs, in which the very men that lead the Assembly in some of its most important measures are attacked by the Assembly with reference to their professional incomes.

From the difficulties of the lawyers we may turn to the troubles of religious officers. The salaries of clergymen of the Church of England in Maryland had been fixed in 1702, by an act<sup>25</sup> which completed the establishment begun ten years before. Upon every Anglican minister presented, induced or appointed, by the Governor was settled a salary to be raised by levying upon every "poll" forty pounds of tobacco. Thus became permanent the famous "40 per poll" tax, which brought such a dower of dispute to Maryland. Had the people of the province, like those of theocratic Massachusetts, been nearly agreed in their religious ideas, such a tax might have been paid with enthusiasm; or had the clergy won the respect of those who differed with them, it might have been borne with patience. As it was, there developed from many complex influences a violent resentment against the clergy of the Established Church. This church was incomplete without a bishop, but in the Establishment no provision for the Episcopate had been made, for Episcopal jurisdiction over the colonies was understood to be vested in the Bishop of London. That officer could not, however, be present in person, and his presence, or the presence of any bishop in America was not desired by many churchmen, who saw in such an innovation a curtailment of local autonomy. The Bishop of London therefore delegated his supervisory powers to officers called Commissaries, who were to be his representatives in the colonies. Here, however, arose a conflict with the powers of the Governor. Even in the Royal provinces, the Governors had been vested with some

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<sup>25</sup> Act of 1702, Chap. 1.

parts of the power which in England belonged to the bishops; while in the Proprietary province of Maryland vastly more authority over church affairs, as well as over some matters now considered secular, was granted to the Proprietor by his charter, which bestowed upon him the "patronages and advowsons" of all churches that should be built, as well as all the rights ever possessed by any Bishop of Durham.<sup>26</sup>

One especially serious result of this division of authority was the impossibility of removing or even of exercising discipline over clergymen whose conduct was improper. Such conduct was unfortunately characteristic of several individuals among the clerical body and the opprobrium incurred by this part was extended to the whole. Over this question, from time to time, the Governors, the commissaries, the clergy and the Assembly were at odds. Some of the commissaries, though excellent and well meaning men, made many mistakes which aroused hostility among their own people, so that many of the Episcopal Church joined Roman Catholic and Protestant dissenters in attacks upon the Establishment.<sup>27</sup> Of these two kinds require notice.

In 1708, and again in 1725, attempts were made to subject the clergy to a regulating court composed of laymen. Upon the first occasion, which was during the Royal government of Maryland, this project was made unsuccessful by the veto of the Governor and the interposition of the

<sup>26</sup> The standard authority for the history of the Anglican Church in Maryland is Hawks, Contributions to the Ecclesiastical History of the United States, Vol. II. Hawks has every wish to be fair-minded, but, as he follows chiefly one kind of source—the letters from the Maryland clergy to the Bishop of London—his views are strongly affected thereby. The important facts concerning Maryland are found recounted in their due relation to the development of the other colonies in the scholarly work of Cross, *The Anglican Episcopate and the American Colonies*. The most important sources for Maryland are the Maryland Archives, the Calvert papers, and the Maryland MSS. in the library of the Bishop of London, at Fulham Palace.

<sup>27</sup> Hawks, Contributions, Vol. II, Chaps. VI and VII.

authority of the Bishop of London; upon the second, it was again the dissent of the Governor, this time in the interest of the Proprietor as well as in that of the Bishop of London, which prevented the bill from becoming a law. This second proposition for a lay court was the conception of Thomas Bordley, a lawyer, who was himself the son of a clergyman,<sup>28</sup> and had been alderman of the city of Annapolis,<sup>29</sup> and to whom the clergy ascribed a spirit of virulent hostility towards the establishment, which arose, in Hawks' opinion,<sup>30</sup> not from any deep conviction but from a desire to further his own political fortunes by removing or damaging the power of a body whose influence was upon the side of authority. Governor Charles Calvert, also, had a bad opinion of Bordley, who had stirred up strife with the Council and who was "a restless enemy to my government."<sup>31</sup> Capt. Hart, however, had thought him "an honest, ingenuous gentleman."<sup>32</sup> Bordley wrote a letter to the Secretary of the Society for the Propagation of the Gospel, in which he charged that Commissary Henderson was of a turbulent and haughty spirit, and wanted to be made bishop. He was conversant with Papists, said Bordley, and refused to take the oath to the present Royal house until compelled to do so.<sup>33</sup> More interesting, perhaps, is his connection with Dulany, with whose name his own was coupled, somewhat later, by Governor Ogle, as those of men capable of doing the Proprietor "either a great deal of good or harm."<sup>34</sup> He was Dulany's chief rival for leadership at the bar, and had not long before been "turned out" of the office of Attorney-General,<sup>35</sup> possibly to make room for Dulany. That

<sup>28</sup> Perry (ed.), *Historical Collections relating to the American Colonial Church*, Vol. IV (Maryland), p. 82. Here may be found most of the important documents.

<sup>29</sup> Calvert Papers, MS. Charter to Annapolis, 1708.

<sup>30</sup> Hawks, *Contributions*, Vol. II, pp. 176-177.

<sup>31</sup> Perry, *Historical Collections*, Vol. IV, 255-6.

<sup>32</sup> *Ibid.*, p. 82.      <sup>33</sup> *Ibid.*, p. 253-4.

<sup>34</sup> See below, p. 42.

<sup>35</sup> Calvert Papers, MS. No. 275.

Dulany's name is not prominent in the anti-clerical proceedings at this time will not be surprising, and it seems not unlikely that, even if allowance is made for the bias of the writers upon the side of the clergy, this attack of Bordley's was inspired to some degree by the desire to match Dulany's success in the English Statutes controversy, which the latter was agitating at this very time.

Shortly after the failure of this attempt, Bordley died. In 1728, however, the clergy were again accusing the Assembly of the intention to ruin them. The next plan of attack, as they regarded it, was to incorporate into a law "for improving the staple of tobacco"<sup>38</sup> a reduction in the salary of the clergy. The bill limited to 7000 the number of plants to be cultivated by one adult, except in case a man had no "taxables" under him, and worked for himself, in which circumstances he could plant more, while no minor should tend more than 3500. The vestry of every parish was to appoint two persons, who should keep, under oath, a list of the names and number of persons allowed to grow tobacco, and who should receive a small salary for their pains. Thus far the chief interest lies in the use of the parish as the local unit, but next follows the provision that for all debts for "public and county levies, parochial and other [regular] charges assessed and levied on the people, and lawyer's fees," the whole or a part sum may be paid at 10s. current money per cent [cwt.]; or three parts thereof "may be paid in tobacco, in specie, in full discharge and satisfaction of the whole," at the choice of the debtor. The effect of this would be, of course, to make the levy for the stipends of the clergy thirty pounds instead of forty pounds of tobacco, per poll, or else to force them to accept a fixed rate of exchange between

<sup>38</sup> Act of 1728, Chap. 2. The text of this act is found conveniently in Perry's Historical Collections, Vol. IV, pp. 270-280. L. H. J., October 14, 1728, records that D. Dulany, from the Committee of Laws, brings in the bill, which was read the first time and ordered to lie on the table.

currency and tobacco, which might prove very disadvantageous in the future.

Such was the law. Hawks, following the strictly ecclesiastical sources which he used, speaks of it as "purporting" to be one made for improving the staple of tobacco, but really intended as a blow at the Church.<sup>37</sup> It was, however, general in its terms; and it subjected to the same hardships—if that is a proper name—the public and county levies, etc. One is struck at once with the similarity to the attack on the lawyers, but of this analogy the reader may judge more fairly after considering more evidence.

To avert this threatened reduction of their stipends the clergy met in secret and sent the Rev. Jacob Henderson, Commissary of the Western Shore, to represent their cause in England. Having successfully evaded any legal process which might detain him in Maryland, he arrived in London, to find that Lord Baltimore was abroad. He therefore laid his case before the King, the Bishop of London and the Society for the Propagation of the Gospel. His arguments may be found at length in Dr. Hawks' volume upon the Maryland Church, and in the Calvert Papers.<sup>38</sup> They amounted to an emphatic statement of the difficulties under which the clergy already labored, and of the loss which this law would cause them. A document to which neither Hawks nor Mereness refers was a petition presented to Lord Baltimore (who had now returned) by the London merchants who traded with Maryland, the most important of whom was Samuel Hyde, a man whose name frequently appears in the commercial papers of the time and who was in close business relations

<sup>37</sup> Hawks, Contributions, Vol. II, p. 197.

<sup>38</sup> Hawks, Contributions, pp. 198-202. Calvert Papers (MS.), No. 52, pp. 1-4. Using Baltimore's absence as an argument for delay, his brother Cecilius addressed the Lords of the Committee and secured postponement of the hearing of Henderson's case. Then, upon Baltimore's arrival and petition that the case be referred to him, the Lords vote to suspend all proceedings in the case. Then follows Henderson's petition to Baltimore.

with Dulany. These merchants quoted the example of Virginia, and urged the necessity of a tobacco law to the economic safety of the province. But after hearing on both sides counsel learned in the law, and with a diplomatic regard for the interest in Maryland exhibited by the Bishop of London and the Board of Trade, the Proprietor dissented to the Act.<sup>39</sup> It was doubtful, he said, if the Act would answer its end. The variability in the value of tobacco will work damage to the property of individuals; it is uncertain whether its price will rise so that rates will be the same as before. It would be better if future payments should be made on the same foot as the old, and the quantity diminished. Were this done all things would rise in value and the province would be wealthier, for there would be more time for labor for other things. It is particularly hard on the clergy who have no other means of livelihood.<sup>40</sup>

Commissary Henderson pushed his advantage so far as to secure the veto of the other acts which touched the Church's possessions or prerogatives, and caused the sending of instructions to the Governor in Maryland, "Not to consent to any act the object of which was to diminish the revenues of the clergy."<sup>41</sup> After receiving from the Proprietor comfortable assurances of his favor towards the clergy, and from the Bishop of London a commission as commissary of the whole province, Henderson returned to Maryland, to find public opinion bitterer than ever in its denunciation of the clergy. So far did this go, that the person of the commissary was threatened with violence.<sup>42</sup> Meanwhile, in 1729, the Lower House tried to pass another act, to make more successful that of the year before; but disagreement between the Houses made the attempt a failure. The bill was first drawn up by Daniel Dulany, Jen-

<sup>39</sup> Calvert Papers, MS. No. 52, p. 5.

<sup>40</sup> Calvert Papers, MS. No. 52.

<sup>41</sup> Calvert Papers (MS.), p. 6-7, 11.

<sup>42</sup> Hawks, Contributions, pp. 204-205.

nings and Key.<sup>43</sup> Next year (1730), after considerable discussion and several conferences, in which Dulany's name often appears,<sup>44</sup> another act was framed which in spite of the Proprietor's instructions received the approval of the Governor.<sup>45</sup> This again was expressed in general terms, but included the provision that the clergy in lieu of one-fourth of their stipend receive other products than tobacco, e. g., wheat, barley, Indian corn and oats. The value of each of these commodities, in place of tobacco was fixed by the law. One bushel of barley, for example, was declared worth twenty-four pounds of tobacco. Against this bill, also, the clergy vehemently protested, urging that it deprived them of their property without their consent and forced them to become traffickers; and inasmuch as the best trade which they could make was in rum, an encouragement would be offered to the very evils already charged against some of the clergy.<sup>46</sup> At the same session of Assembly, on the other hand, both Houses joined in an address to the Proprietor in favor of the bill, and they were successful, for the Proprietor permitted the bill to become law. After the expiration of this act the next important regulation was that of the omnibus tobacco laws of 1747 and 1763, which will receive extended discussion hereafter. By these laws the clergy's income was definitely reduced to thirty pounds of tobacco. When this legislation expired, in 1770, the clergy claimed that the law of 1702 was thereby in force, and the dispute which thus arose was merged in that over the regulation of fees by proclamation, and soon the compromise then effected yielded to the greater settlement of the Revolution.

<sup>43</sup> L. H. J., 1729. Especially August 1.

<sup>44</sup> For example, he is second of six members of the Lower House chosen for a committee of conference. L. H. J., May 26, 1730.

<sup>45</sup> Act of 1730, Chap. 7.

<sup>46</sup> Calvert Papers, MS. No. 52, pp. 18-25. Hawks, Contributions, Vol. II, pp. 209-11. The clergy claimed the 40 per poll as their property, on the ground that the Act of Establishment of 1702 was passed under the *Royal* government and was perpetual.

Returning to the earlier period, we are told that, upon Henderson's petition against the second law, Daniel Dulany entered the lists as a controversial writer. Dr. Hawks, who made a careful examination of the records of the Bishop of London, at Fulham Palace, refers to a somewhat extended warfare of pamphlets in which Dulany and Henderson argued out the question. Dulany's name, however, does not appear in the documents collected by Bishop Perry and whether any of these pamphlets remain is doubtful.

In view of the prominence, in every history of Maryland, of the long drawn out controversy over officers' fees, it would be superfluous to repeat in any extended form the facts concerning it. It will suffice merely to state the point at issue, and the relation of the dispute to the tobacco question. For the first, then, from the stand-point of the Proprietor, it was claimed that he was given by his charter the right to constitute offices and appoint officers; and that this necessitated the right to fix fees for their support. As a matter of fact the fees were fixed by the Proprietor, through the Governor and Council, at the beginning of the colony, upon frequent occasions thereafter, and for considerable periods. But as the political life of the province matured, it was seen that the fees were really in the nature of a tax, levied upon the people of the province without their consent; and constitutional authority against them was found in the charter's provision that neither the Lord Proprietor nor his officers should issue ordinances that should "extend to oblige, bind, change or take away the Right or Interest of any person or persons, of or in Member, Life, Freehold, Goods or Chattels." It was therefore the old conflict of the theory of prerogative against the modern idea of constitutionalism; but in Maryland the Lower House had thus far been able only to pass laws for the limitation of officers' fees, and when these

expired, the proprietary officers fell back upon the right of the prerogative to fix these charges.<sup>47</sup>

By a compromise between the Houses, a limited reduction in the fees of some officers had been accomplished in 1719, during Governor Hart's rule.<sup>48</sup> This did not long remain satisfactory to the Lower House, which in 1724 made the astounding proposal to reduce fees by one-half.<sup>49</sup> The Upper House would not listen to this, but next year a bill became law,<sup>50</sup> which reduced the fees about a quarter of the rates then lawful. The Upper House passed the bill and then petitioned the Proprietor to veto it, a most peculiar method of procedure, one which reveals lack of backbone in the Council, and which served to arouse popular fault-finding with the veto power. When this act of 1725, coinciding as it did with the other important constitutional measures of that year, received the Proprietor's dissent, there was no law for the limitation of fees, because the act of 1719 expired. There was then for some years uncertainty, and attempts of the legislature to remove this by a law were unsuccessful.<sup>51</sup>

For this reason, we may turn to the tobacco trade. Like the salaries of the clergy, the fees of officers were payable in the tobacco currency. As tobacco was so low in value, the officers claimed that their fees should rather be increased than decreased; while the popular party held that if, as it was intended and tried, along with the reduction in fees, went a reduction in the amount of tobacco produced, the value of the fee would not seriously be diminished. Therefore no agreement could be made; the offi-

<sup>47</sup> McMahon, *Historical View*, pp. 157-158. Mereness, Part II, Chap. V, especially pp. 373-375.

<sup>48</sup> Act of 1719, Chap. 18.

<sup>49</sup> L. H. J., October 16, 1724.

<sup>50</sup> U. H. J., November 3, 1725. There is here some confusion of dates in Bacon's Laws. No act for the fall session of 1725 appears therein, and to an Act for the Limitation of Officers' Fees, of 1725 (March), Chap. 23, there is no record of dissent.

<sup>51</sup> For example, bills failed in 1728 and 1729.

cers met with insolence from the citizens,<sup>52</sup> who, on the other hand, did not wish to pass a law for improving the staple without reducing the fees which they considered excessive.

In view of the facts recited, this legislation against lawyers, clergy and officers seems, then, to have had a common ground. It exhibits the jealousy of a debt-ridden agricultural population toward salaried creditor classes. If this interpretation is correct, it modifies the opinion of Dr. Hawks, and the ecclesiastical writers, who, including the clergy of the time, regarded the church as singled out for attack; which, as has been shown, was not the case. Let us not be hasty, however, in forming any conclusion, but observe the progress of events in economic history during the important years that follow.

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<sup>52</sup> See Governor Calvert's letter, quoted below, p. 36. In 1728 the Assembly was called on take notice of a seditious paper which suggested the intimidation of the legislature by force. (L. H. J., October 26, 1728.) As this reminds one of the seventeenth century history of Maryland, so the actual cutting of tobacco in 1732 recalls the "Plant Cutters' Riot" in Virginia.

## CHAPTER II

### COMMERCE AND CURRENCY

In the preceding chapter the bills of the years 1728-1730, with reference to lawyers, clergy and officers, have received sufficient notice. During the same years, the Assembly took up other important measures. The year 1728 was one of the most critical in the decade of controversy over the English Statutes, and one of Dulany's laws to extend the English Statutes was vetoed by the Proprietor, while in 1730 another met the same fate. In the former year, also, appeared from the Annapolis press Dulany's important pamphlet, "The Right of the Inhabitants of Maryland to the Benefit of the English Laws," full of emphasis upon the rights of the colonists as Englishmen. In 1730 the Proprietor's dissent to several laws was announced to the Assembly. Meanwhile, however, the Lower House had adopted a very radical resolution, that "This House having taken into consideration that the Right Honourable the Lord Proprietary hath frequently dissented to the Laws past in this Province by the Legislature thereof, which we conceived to be an Aggrievance to his Majesty's subjects therein and not warranted by the Charter, and as it is an Affair of the greatest importance to the people, to be at a certainty about their Laws, we desire your Honours to join with this House in applying to his Lordship, or in taking such other steps as may be necessary to settle a matter of so great Consequence."<sup>1</sup>

Nothing came, at this time, of the protest against the Proprietor's veto, which, for some years, thereafter was used very freely. Ultimately, the same violent opposition

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<sup>1</sup>L. H. J., August 5, 1729. For the opposition to the Proprietor's veto, during the earlier period of colonial history, both in Maryland and in South Carolina, see Greene, *The Provincial Governor*. Harvard Historical Studies, Vol. VII, p. 14.

to interference with the law which is here manifested prevailed over the prerogative, and the veto was disused. This was accomplished by filling the Upper House with stronger men, disposed to the Proprietary interest, who would hold in check legislation of a radical character. When he lacked this support, the Proprietor found that he had to yield.

A further threatening move of the Lower House was the submitting by that body of another proposal to establish by public support an agent in England,<sup>2</sup> who should represent to the British Government the interests of the colony.<sup>3</sup> To this the Proprietor was bitterly opposed, and stated upon occasion that no one could so well represent the province as himself; which from his standpoint was probably true. We may doubt that the desire of the Lower House for such an agent was as real then as it later became; the idea was probably brought forward as one more means of annoying the Governor and Proprietor. At this session the Upper House rejected the proposition, and another attempt made two years later was no more successful.<sup>4</sup>

Very important, from an economic standpoint, was another piece of legislation proposed, but not carried through, in the session of 1729.<sup>5</sup> This was a bill for the emission of a paper currency. The fever for paper money which had so long been rampant in New England had developed in Pennsylvania during the hard times of 1722-3.<sup>6</sup> Now it reached Maryland, likewise disturbed by

<sup>2</sup> L. H. J., 1729, July 23, August 1. The proposition (at this point) was first made in 1725.

<sup>3</sup> On colonial agents in general, see Tanner, *Colonial Agencies in England during the Eighteenth Century*, Political Science Quarterly, Vol. XVI, pp. 24-49; and for Maryland, see Mereness, pp. 465-472.

<sup>4</sup> L. H. J., 1731, August 26.

<sup>5</sup> See Governor Calvert's letter below, p. 34; also L. H. J., July 23 to August 5, 1729.

<sup>6</sup> Shepherd, *History of Proprietary Government in Pennsylvania*. [Columbia University] Studies in History, Economics and Public Law, Vol. VI, Chap. IX, especially pp. 405-414.

economic depression. Of all times to float a paper currency this would seem to us to have been the worst. The plan of remedying one bad kind of money by the addition of another seems the height of folly. But the experience of the other colonies, which were pleased with the results, and the low state of trade in Maryland, which made any change worth trying, combined to make this a matter of the greatest public interest. Agitation of the project continued four years, however, before the issue of bills was authorized by law.

For the state of the public mind during this period three very interesting sources of information are fortunately accessible. One of these, the *Maryland Gazette*, expresses the feeling of the general public; another shows the attitude of the Governor, while the third is a political poem upon the situation. It is well worth while to suspend our narrative to examine the contents of these valuable sources.

Several numbers of the *Maryland Gazette*,<sup>7</sup> luckily preserved from destruction, inform us of the news which circulated in the province. To begin with, a long series of letters deals with the relations between the tobacco merchants in London and those of Maryland. The former were joined into an association, with rules and regulations, and made an agreement to sell none of their tobacco for less than a certain price;<sup>8</sup> but this attempt was ineffectual and tobacco had been sold below that price. It was charged by Nicholas Ridgely and others that the individual who broke the agreement was Samuel Hyde, the merchant who had the largest consignments from Maryland of any concerned in the trade. Over this accusation the letter writers take sides, and often in forcible English present their arguments and counter arguments. Toward the end

<sup>7</sup> The numbers in the possession of the Maryland Historical Society begin December 3-10, 1728, and, with gaps, run to July 15-22, 1729.

<sup>8</sup> At first  $2\frac{1}{2}$ d. a pound, then  $2\frac{3}{4}$ d. a pound.

of the summer of 1728, a letter<sup>9</sup> signed by Charles Calvert and eighty-three other gentlemen was sent by Daniel Dulany, at their command, to Micaja Perry, chairman of the London Merchants. This paper expressed their approval of the combination of the merchants, and threatened any one who broke the agreement with loss of the patronage of the Maryland planters. The Marylanders also declared their serious disapproval of the practice of sending their tobacco to Holland, and requested the London combination "not to send it to that market, but to sell it in London, or keep it by you, 'till you are obliged to export it to save the Duty." They approved also of a charge of 3d. per hogshead of tobacco made by the merchants "for sundry good ends." The Londoners appointed a committee of twelve to frame an answer, and this was published in the Gazette of April 8-15, 1729. After informing the planters of the failure to keep up the price, they confirm the disapproval expressed by the former as to shipping tobacco to Holland. After sundry remarks their reply proceeds with some interesting particulars as to the trade. London, they say, had formerly a much greater share of the Maryland and Virginia trade than now, and so could more easily control the market. Now, nearly one-half of all the tobacco that comes to Great Britain goes to the out ports, especially Glasgow. They accuse the traders of the latter place of having some unknown advantages in the customs. Moreover, "the quantity imported into Great Britain, of late years, has really been more than all Europe doth consume within the year, which leaving every year a stock of old tobacco upon hand, has clogged the Markets in Europe, and that is another and indeed a grand cause of the lowness of the price." Then follows their advice to the planters, first as to the quantity, which may be reduced: 1. By planting less every year. 2. By destroy-

<sup>9</sup> As given in the Gazette for March 18-25, 1729, the date of this letter was September 3, but as quoted in the letter of the Merchants, it was August 14.

ing every year all the trash and mean tobacco. 3. By forbearing to plant every fourth or fifth year. The first is preferable, and the production of other commodities should be encouraged; the second is harder, especially for the poor, and the debtors, and to accomplish it, all future debts should be contracted in money, not in tobacco; it is now time to leave off the old way of barter. The third will be useless unless Virginia joins with Maryland. As to the quality, that will be improved by the former measures. There should, moreover, be only one sort of tobacco in a hogshead. The merchants complain of the lowness of freight; their ships cannot be supported under eight pounds per ton, nor should they be required to delay so long for loading. Tobacco should not be shipped the year round, but only between February 1 and July 31. They show that the Virginians are far more prompt in getting their crops ready. Objection is made to the practice of rolling the tobacco, which occasions harm and loss. They close with the suggestion that the planters do not clear bills upon them before their tobacco is sold; the freight and the customs are hard enough to bear.<sup>10</sup>

Another interesting letter includes the opinion of Thomas Reese, "an eminent lawyer," that such an agreement as that of the merchants, not to sell goods but at such or such prices, if it does not fall within the prohibition of the Statutes of 56 Edward VI, Chap. 14, or 13 Elizabeth, Chap. 25, is an offense at the Common Law.

In view of the economic tendencies in the modern organization of the business world, this attempted combination for the regulation of trade and prices, upon a scale which involved transoceanic commerce, and the failure to accomplish the result aimed at are phenomena worthy of closer investigation by the economic historian. We should know

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<sup>10</sup> This letter is dated London, November 7, 1728, and is signed by Micaja Perry and thirty-six others, among whom are Samuel and John Hyde. It is to be found in the Gazette for April 8-15, 1729.

just how these merchants were organized and what their political influence in England amounted to.<sup>11</sup> More light should be thrown, also, upon the relations of planter and merchant. In Maryland, moreover, a query suggests itself, as to what was the exact nature of the business relations of these merchants, of John Hyde, for example, to the Proprietor.

Besides this information that bears directly upon the tobacco question, the Gazette presents several items of general political interest. From Boston came a letter of Mr. Dummer, giving account of a memorial read before the Board of Trade. In May appears the speech of his Excellency Governor Wm. Burnett to the Assembly of Massachusetts, urging "his Majesty's 23rd instruction" for fixing a salary, now accomplished in every colony in his Majesty's dominions except in New England. That the 23rd instruction was not as efficacious, and the example of the rest of his Majesty's dominion not as inspiring as was hoped is indicated by the news of the dissolution of this Assembly hardly a month later. New Hampshire, however, seems more tractable, and settles £200 a year on Governor Burnett during the term of his government. From Pennsylvania is reported the speech of Patrick Gordon, the Lieutenant-Governor, to the representatives of the freemen of that province. New York's Governor is quoted as recommending the appointment of an agent. From a still greater distance comes the news that Jamaica has established a perpetual revenue.

Of more direct interest, in view of the agitation in Maryland, is another communication from Philadelphia.

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<sup>11</sup> The pamphlet entitled, *The Case of the Planters of Tobacco in Virginia . . . to which is added a Vindication of the Said Representation*, was printed in London in 1733, thus not long after the Virginia Inspection Law of 1730. The "Vindication" quotes at length a letter dated London, 15 December, 1729, from an eminent merchant in London to a correspondent in Maryland, which goes into much detail to show how unavoidable are the charges the merchants make, all of which the author of the "Vindication" declares, is a farce, and shows how people are imposed upon.

In the columns of the Gazette<sup>12</sup> is republished the youthful production of Benjamin Franklin, entitled "A Modest Inquiry into the Nature and Necessity of a Paper Currency," in which Franklin had "set forth its advantages so convincingly that he was given [in Pennsylvania] the lucrative job of printing the money."<sup>13</sup> It was hardly to be expected that Maryland should not follow the example of the larger and wealthier colonies, even if her economic condition had been far sounder than it really was. Franklin's paper, effective in Pennsylvania, doubtless was no less so in Maryland.

From the Gazette we may turn to the second document referred to above, which is a long letter from the Governor, Benedict Leonard, to the Proprietor, Charles Calvert, in which he unburdens his soul of the weighty matters of state which trouble him, and touches upon several of the topics of which mention has just been made.<sup>14</sup> He has first to explain the failure of the bill for paper currency. He had insisted that it should not "take place" until his brother's pleasure should be known. Very naturally then "a set of people in the Lower House" who "were disputing or rather denying" the Proprietor's right of dissent, would not accept the amendment inspired by the Governor's caution. He had urged this caution because of the importance of the bill. Then follows this description of the financial situation:

"Money, or somewhat to answer its Current Effects in trade, is Certainly much wanted here, wee may Barter Between one Another our Staple Tobacco, but to Carry on and Inlarge our trade Abroad, & to Invite Artificiers Shipwrights &c to settle amongst us, another species of Currency in payments, seems very desireable. New York, Pennsylvania &c are vastly improved in foreign Trade, as well as home Manufactures, by a Paper Currency it is that, in

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<sup>12</sup> Gazette for July 15-22, 1729.

<sup>13</sup> Shepherd, Proprietary Government in Pennsylvania, p. 418, note.

<sup>14</sup> The letter is printed in the Calvert Papers, No. 2, Fund Publications of the Maryland Historical Society, No. 34, pp. 68-81. It bears date Annapolis, October 26, 1729.

lieu of Specifick Coin, which seems, to give life, Expedition, and Ease to trade and Commerce. This has drawn them into Communitys or Towns; they are daily growing more and more populous, and are Supposed to Increase as proportionably in Credit and riches. In Virginia and Maryland the Case is Much otherwise; Tobacco, is our Staple, is our All, and Indeed leaves no room for anything Else. It requires the Attendance of all our hands, and exacts their utmost labour, the whole year round; it requires us to Abhor Communitys or Townships, since a Planter cannot Carry on his Affairs, without Considerable Elbow room within his Plantation When All is done, and our Tobacco sent home, it is perchance the most uncertain Commodity that Comes to Market; and the management of it there is of such a nature and method, that it seems to be of all other, most lyable and Subject to frauds, in prejudice to the poor Planters. Tobacco Merchants, who deal in Consignments, get great Estates, run no risque and Labour only with the pen; the Planter can scarce get a living, Runs all the risques attendant upon trade, both as to his negroes and must work in variety of Labour. I write not this in malicious Envy, to the Merch'ts, nor do I wish them less success in business, but I heartily wish the Planters Lay was better When our Tobacco then is Sold at home, whatever is the product of it returns not to us in Money, But is either converted into Apparell, Tools or other Conveniences of life, or Else remains there, as it were Dead to us; for where the Staple of a Countrey, upon foreign Sale, yields no return of Money, to Circulate in such a Country, the want of such Circulation must leave it almost Inanimate; it is like a Dead Palsie on the publick, Since it can never Exert its members or faculties in the pursuit of trade and Commerce An increasing Country and growing people, as this is, and a Staple, at best Uncertaine, but of late visibly declining in Value, as Tobacco is, wishes the people here to look about, and Enlarge their foundation in trade, to the which money or some Currency, which may answer the same uses, is necessary, and the Expedient to such End is a Paper Currency as proposed in the Act."

Such was Governor Calvert's opinion on the paper money question. His caution had still another basis. "I dare not Venture to pass any such Law here without Even the Consent of the Crown, for an Instruction of the Late King Dated the 31st of Aug: 1721, It seems to require that no Law of an unusual or Extraordinary nature should be passed here until her Majesties pleasure was

therein known, whereunto reference may easily be had in Council or Board of Trade Office. This was Indeed the main reason for my insisting upon the first amendt . . .”

The quotation just made reveals to us one reason for the general conception that Maryland was a quiet, loyal province. The Lords Baltimore had had experience enough to wish to avoid if possible examination by the Royal authority; hence such an instruction as this, though entirely contrary to the spirit of the Proprietary charter, was zealously to be obeyed. Even in its relations with the home government, the Proprietary power was a very different one from that of the preceding century.

From the paper money question Governor Calvert turns to others. He advises the Proprietor to accept and then to continue the existing composition of his fines and quit-rents for a fixed tax. He then goes into a long discussion of the financial support of government, which need not be repeated here, except two or three paragraphs which point out his ideas of government.

Expressing his regret that the people feel that the support of government “is in their own free choice, to the which you cannot oblige them,” he proceeds:

“This Superiority, as I may term it, of the people over the Government, seems Unnaturall, and is I am sure Repugnant to the very ends for which Government was Instituted, viz., an Authoritative Influence for the good order of Society.

I am in hopes that the present Contest on this Subject with relation to New England, will so far be Determined next Session of Parliament, as to Vindicate the rights of Government in Generall, and awe such as have not yet, though they may be ready to play the New England Game. It would be Extreamly happy for your Ease and Quiet, should the Parliament in some Vote or Law include all the Governments in the Plantations so far as to provide an Establishmt Certain for the Support of the several Governments.”

The next topic is that of officers’ fees. Since the Proprietor’s dissent to the law of 1725, there has been trouble in collecting fees, and “Every insolent fellow thinks himself free to refuse paym<sup>t</sup>; and Brow beat, as it were, the

Officers." Calvert therefore recommends certain Queries to be advised on :

1. Whether the Proprietor is empowered by the Charter to Establish fees, without a law,
2. How such a Power may be exercised so as to be effectual
3. If such a power is not warranted by the Charter, how can the Officers recover their fees, in default of the action of the Assembly.
4. "Whether, whilst there is no law here for any other Certain Establishmt, the Officers may not recover fees at law according as they are settled in the Courts of England, By the Very Rule laid down by these people, that the Laws of England are to take place when our own are silent. . . ."

After this last very neat counterstroke upon Dulany and his party, the Governor turns to matters of less import, which we may neglect, and pass from prose to the poetry that was inspired by the circumstances of this period.

At some time during the year 1730, and apparently while the legislature was still in session, there was printed by William Parks, of Annapolis, a poem of considerable length, entitled "Sotweed Redivivus: Or the Planters Looking-Glass. In Burlesque View. Calculated for the Meridian of Maryland." By E. C. Gent. In 1900, this, with other poems, was republished, as Fund Publication No. 36, by the Maryland Historical Society, under the editorship of Dr. Steiner; and to this volume the reader is referred for the full text of the poem and a discussion of the question of authorship. What concerns us here is the purpose of the poem, which is not made very clear in the introductory notes. When, however, it is read in the light of the events narrated above, it proves to be a somewhat humorous argument for the economic improvement of Maryland by the cessation or limitation of tobacco planting, and the substitution of general industry and commerce. Thus in the preface the poet declares:

"Its industry, and not a nauseous weed,  
Must cloath the Naked, and the Hungry feed.

Correct these Errors length of time have made,  
 Since the first Scheme of Government was laid  
 In Maryland, for propagating Trade  
 Will never flourish, till we learn to sound  
 Great Britain's channel and in cash abound."

In the body of the poem the author tells us of a visit to Annapolis :

"When the High Court of Delegates  
 Assembled were, with Resolution,  
 To fortify their Constitution,  
 By Laws, that should, to say no more  
 The common weal to Health restore.

Reduc'd to Penury indeed,  
 By feeding on this *Indian Weed*.

For Remedy, both Houses joyn  
 To settle here a *Current Coin*  
 Without Exception, such as may  
 Our *Public Dues* and *Clergy pay*.

There is opposition, apparently, to paper money and a planter whom the author meets declares his wish for

"The levelling of a standing Coin  
 It matters not what Sort of Mine  
 It issues from, since ev'ry thing  
 Is worth no more than it will bring."

And proposes a currency of copper, tin or brass, to bear the King's image and pass throughout America, of equal worth everywhere. This financial discourse is interrupted by a sudden noise, and when Sotweed asks for an explanation, "one in drink" tells him:

"The Reason's this, if you must know it,  
 The House divided is, old Poet,  
 In voting for the *Money Bill*;  
 Which, tho' compos'd with wondrous Skill  
 Will never pass, I dare be bold  
 A Pipe of wine on it to hold."

At night he held discourse with another planter, who in the second canto of the poem describes the careless and excessive production of tobacco and the dire results. The pressure from the merchants is mentioned, and the burden of the "petty charges," subsidies both old and new

"As factors tell us, run so high  
They swallow up an Industry."

The low character of the staple seriously harms commerce.

The situation, moreover, will grow worse and worse if the present course is followed. The planter then suggests first "a jubilee once in five years;" then the limitation of the number of pounds to plant. Merchants buying the staple should be obliged to pay at once one-sixth of the value of the tobacco in currency or in bills, and the rest in goods. Next he urges:

"We ought conveniently to dwell  
In *Towns* and *Cities*, buy and sell  
Our Merchandise at publick Scales.  
And as it often rains and hails,  
*Warehouses* should in common be  
Erected; where, for a small Fee,  
Our *Staple* would be convey'd thither  
Securely screened from stormy weather.

Reference then follows to the land rents of the Marylanders, and we find these outspoken lines:

"I must confess, 'tis just and true  
That Cæsar should be paid his Due:  
But one Man to monopolize  
More Land, than yet he occupies,  
And Foreigners the *Quit-Rents* pay,  
In *Sterling Coin*, is not fair play:  
A grievance ought to be suppress'd,  
By Ways and Means, Cæsar knows best."

At length the planter closes his evening discourse by informing his friend that:

"The only way I know to heal  
 The ling'ring State of Common weal  
 Is to ordain all Taxes be,  
 As well the *Priest*, as *Lawyer's* fee,  
 Hereafter paid in *Currency*  
 Or with the Produce of our Grounds,  
 In *stinkebees* too much abounds;  
 Else, 'tis in vain for us to hope  
 With our misfortunes long to cope.

Next morning the discussion is continued. The planter refers to the Press (meaning the *Gazette*) swelling with schemes

"To make us thrive at home the better  
 As P. P. tells us in his letter,"<sup>18</sup>

and urges the drainage of the country, planting of grain, hemp, flax, rice, and cotton.

"Next, may their Industry be seen  
 In *Pastures* fat, and Meadows green;  
 Where *Sheep* and *Cattle* manure Ground,  
 In mighty numbers shou'd abound.  
 The Hides will for their grazing pay,  
 And *wool* misfortunes keep in play.

Merchants then of ev'ry Sort  
 And mariners will here resort,  
 When they hear *Money* circulates,  
 Within our Towns and City Gates."

Again, the Marylanders should export their produce in their own ships, for building which abundant materials are at hand.

"Nothing is wanting to compleat  
 It for the Sea, a trading Fleet  
 But Industry and Resolution."

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<sup>18</sup> "P. P." writes one of the letters in the *Gazette* to which reference has been made above.

"Can ne'er think to grow Rich and Great  
 But by an Independent State;  
 Or hope to thrive, unless we try,  
 With coin as Wings abroad to fly.  
 We then about the World might roam;  
 See how our *Staple* sells at Home;  
*Barbadoes* and *Jamaica* drain;  
 Bring hither from the mines of Spain,  
 Moidores, Pistoles, and Cobbs, full Weight;  
 The very best of *Spanish Plate*."

And if these coins tended to leave Maryland an act might be passed to limit their circulation.

Sotweed's comment in this poetical discourse on trade is that *Industry* is the essential thing, and he advises the planter:

"Begin, be bold, old *Horace* cries,  
 And bravely venture to be wise.  
 In vain he on the Brook Side stands,  
 With Shoes and Stockings in his Hands;  
 Waiting 'till all the Stream be past and gone,  
 That runs (alas!), and ever will run on."<sup>17</sup>

Whether these evidences of what was going on in Maryland "improve the heart," to use Chalmers' phrase, or not, they at least "inform the understanding" as to the economic situation and the lively excitement among all parties concerning it. The chief result of the labors of 1730 was, as has been indicated, the passage of the tobacco amendment law which reduced the clergy's income. After this Governor Benedict Leonard Calvert ruled but a single year, when he was succeeded by Samuel Ogle. In Calvert's last two sessions of Assembly not much of importance was accomplished, except the passage of a bill to emit £36,000 of paper money, which, in accordance with the Governor's very definite ideas, expressed in his letter, contained a provision that it should not become law until

<sup>17</sup> The citations are all from Early Maryland Poetry: Maryland Historical Society Fund Publication No. 36.

the Proprietor had signified his assent. As this was never given, the act never became effective.<sup>18</sup>

Ogle was a man of conciliatory temperament, but he found the country "as hot as possible about the English Statutes and the Judges Oath."<sup>19</sup> He began his career with civil conduct to everyone, disregarding his predecessor's advice against some of his subjects. In this he feels justified and tells the Proprietor "that nothing in the world has hurt your interest more than your Governours declaring open enmity to such men as Bodeley and Delany who were capable of doing you either a great deal of good or harm and trusting your affairs to such as could not possibly do much one way or other."<sup>20</sup> At his first Assembly, the ten years of dispute over the English Statutes was closed by a judicious compromise, in which a form of oath drawn up by Dulany was accepted, and other important acts were passed. To only one did the Proprietor dissent.

The example of conciliation set by Ogle was followed by the Proprietary when he visited the province and for a while took the government into his own hands, in 1732-3. The chief interest in America was the settlement of the boundary line between Maryland and Pennsylvania. Just about the time of his voyage, however, the limiting and controlling power of the Crown found expression in a way that illustrates the machinery of the colonial system of the time. The House of Commons addressed the Crown, and the Crown directed the Lords of the Committee on Trade and Plantations to prepare a report on the state of the plantations, especially with reference to

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<sup>18</sup> Bacon's Laws of Maryland, Act of 1731, Chap. 21.

In the same session, a bill proposing to levy 30,000 lbs. of tobacco additional upon the inhabitants of St. Paul's Parish to finish St. Paul's Church, shows that the hostility to the clergy was not so great as to make the Assembly unwilling to assist the Establishment.

<sup>19</sup> II Calvert Papers (Printed), p. 82.

<sup>20</sup> Ibid., p. 85.

the trade laws. The Lords of the Committee therefore wrote to Governor Ogle for information concerning Maryland.<sup>21</sup> Only a month before, Governor Ogle received instructions from the Crown,<sup>22</sup> forbidding the passage of any law laying greater duties on English merchants than are laid on the native colonists. These interrogations of the central government elicited a curious reply. One cannot but suspect that the doleful tone of this report was intended to reduce to a minimum the interest of the government at home in Maryland affairs. Besides satisfying this dangerous inquisitiveness, the Proprietor had to pacify the discontented Marylanders. His personal presence in the colony was a great step in this direction. He treated the clergy with cordiality and labored to establish a better feeling between them and the Assembly. For the first time he did not veto the Act for the Justices' Oaths, but accepted Governor Ogle's compromise. The Assembly which met in 1733, perhaps awed by the presence of the head of the government, with his power to reward or punish, was much less troublesome than its predecessors. Only thirteen acts were passed, of which, besides a new Militia Act,<sup>23</sup> the sole law of great importance was the act which established a paper currency.<sup>24</sup>

Of the discussion of this plan we have made mention above. The balance of trade was against the colonies in nearly every case; in Maryland this was the more true, because of the money dues of one sort or another paid to the Proprietor in England, which drained the metals from the colony. The Assembly tried to stop this, or to counteract it, by putting a premium on gold and silver imported into the colony.<sup>25</sup> But with the experience of Pennsyl-

<sup>21</sup> Calvert Papers (MS.), No. 52, pp. 46-47.

<sup>22</sup> *Ibid.*, pp. 45-6.

<sup>23</sup> 1733, Chap. 7.

<sup>24</sup> 1733, Chap. 6. "An Act for Emitting and making Current Ninety Thousand Pounds Current Money of Maryland, in Bills of Credit."

<sup>25</sup> The value of foreign silver in terms of pounds sterling was fixed by Act of 1708, Chap. 4. The law for encouraging the importation of gold and silver is the Act of 1729, Chap. 15.

vania and the other colonies to look to, this did not satisfy the Marylanders, whose tobacco had fallen so much in value as seriously to affect its use as a money medium. In the preparation of the early bills, which failed to receive the Governor's or the Proprietor's approval needful to make them effective, Dulany had been of active service. Now, in 1733, with Dulany again playing a prominent part,<sup>26</sup> it was at last enacted<sup>27</sup> that bills of credit were to be struck to the value of £90,000 American currency (according to the English statute of 6 Anne, for ascertaining the rates of foreign coins in the plantations) to circulate 31 years for the 29th of September, 1733.

Counterfeitors were to suffer death without benefit of clergy. These bills were to be current in all future contracts, and a tender thereof, in discharge of any money debt was to be good in law. All fees and levies, except the clergy's dues, and tobacco for building and repairing churches; all securities and similar allowances; all fines, etc., given in tobacco by any laws of the province, were made payable in bills of credit, at 10s. per hundred pounds.<sup>28</sup> For issuing the bills, there were provided three Commissioners and a Clerk, with their office at Annapolis.

The provision for putting the bills into circulation is very curious, and reveals a radical cure for the tobacco trade's diseased state: (1) Through the County Clerks<sup>29</sup> the Commissioners were to issue to each master of a family 30 shillings in bills for each "taxable." In return, every such master was to burn, in the presence of tobacco burners appointed by this act, 150 pounds of tobacco for each taxable to them belonging, in the year 1734, and the like quantity in the year 1735, on penalty of 20s. currency for every 150 pounds of tobacco omitted; the result obviously aimed at by this remarkable provision was the destruction of trashy tobacco. (2) £3000 of the bills were appropriated for a residence for the Governor, from which much difficulty later arose. (3) £500 were given to every county for jails, etc. (4) £500 were for repairing the public buildings in Annapolis. (5) The remaining bills were to be lent out on

<sup>26</sup> See U. H. J., April 2, 1733.

<sup>27</sup> Act of 1733, Chap. 6.

<sup>28</sup> Certain minor limitations upon this general rule will be found in Bacon's abstract of the law.

<sup>29</sup> The County Clerks were to receive £10 as commission, and the tobacco burners 6d. for every 150 pounds burned.

interest by the trustees at 4 per cent, either upon mortgage or personal security, duly regulated by the act. These clauses therefore gave the Commissioners some of the characteristics of a bank. Lastly, for the repayment of the bills of credit a sinking fund was to be established, for which a duty of 1s. 3d. sterling per hogshead was laid upon all tobacco exported, to be paid by the masters of ships, in bills of exchange. These bills of exchange were immediately to be remitted to London, to three trustees appointed and controlled by his Lordship, who should invest the money thus received in the purchase of bank stock for the use of the province, lay out the interest received in the purchase of similar securities, and report annually to the Assembly. The bills were to be retired at two separate times; first, between September 29, 1748, and March 29, 1749. All bills brought into the office for payment were to be cancelled and new bills, to the value of two-thirds thereof, were to be delivered to the owners of the bills; for the other third the owners should receive bills of exchange drawn by the Commissioners upon the London trustees, payable at forty days' sight to the owners, or their order, to be charged to the account of the province of Maryland, and to be paid by the London trustees out of money derived from the sale of the necessary quantity of the bank stock; second, all the remaining bills were to be retired in a similar manner, when the full period of 31 years had expired.

Thus was Maryland put in closer touch with the great financial machinery of London. Such contact, it must be remembered, was not new, for in private dealings London merchants had for years acted as bankers and brokers for the planters of the colonies. To turn to the effects of the law, hardly a year had passed when we find an act to relieve some individuals from the charges of prosecutions for not burning the tobacco as required by the act of 1733,<sup>30</sup> which suggests that as a remedy for the glut in tobacco it was not a complete success. On the financial side we find, as we might expect, that the bills depreciated in value, and thus embarrassed the money system still further. In this connection may be quoted the brief comment of Dr. Douglass, in his "Discourse concerning the Currencies of the British Plantations in America":

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<sup>30</sup> Act of 1733, Chap. 4.

"In Maryland Silver continued at Proclamation Value until A. 1734, with a considerable concomitant Truck Trade as a Medium, viz. Tobacco; they then emitted 90,000 in Bills, which tho' payable to the Possessors in Sterling well secured, the Sum being too large, and the periods too long, viz. three partial Payments of 15 years Periods each; *Exchange immediately rose from 33 to 100 per cent.*"<sup>81</sup>

It will be noticed that Douglass gives the wrong date for the law and is mistaken as to the periods of redemption. As to the rate of exchange, he was probably better informed. From Maryland sources we learn that this depreciation, which at times reduced the bills to half their par value, was chiefly during the first period of fifteen years and that after the Inspection Law of 1747, and the scrupulous fulfilment of the law by sinking one-third of the bills, the exchange value of the remainder rose rapidly. In 1764, when the final balancing of accounts took place, it was found that Maryland had a considerable sum to her credit as profit from the experiment, a circumstance which contrasts very favorably with the history of the paper currency in other colonies. This may justly be regarded, then, as one of the influences which improved the economic condition of Maryland. But it could not have worked so favorably but for the limitation of the amount issued, the excellent arrangements for retiring the notes, the subsequent regulation of tobacco, and the development of other sorts of agriculture, which will be discussed at length in the succeeding chapters in connection with the endeavors of perhaps the most prominent citizens of that day to promote all these desirable objects.

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<sup>81</sup> Douglass, A Discourse, etc., reprinted in American Economic Association, *Economic Studies*, Vol. II, p. 315. This reprint is edited by Professor Bullock. The Discourse was first published in London in 1739, and in Boston in 1740.

## CHAPTER III

### PUBLIC SERVICES OF DANIEL DULANY THE ELDER

One result of the good feeling which, during Lord Baltimore's stay in Maryland in 1733, marked a cessation of political strife, was the acceptance by the people, without complaint, of a proclamation<sup>1</sup> which fixed the rates of officers' fees. For some time there had been no law on this subject, and some confusion had arisen. Before many years, the Lower House awoke to its responsibilities, and entered upon another violent assault against the Proprietor. For the postponement of this conflict at least one reason is to be found in the fact that Lord Baltimore decided to accept his Governor's advice, and break the opposition by removing its leaders. Of these leaders the nature of the documents at our disposal makes it hard to give a satisfactory account. One of them, however, has been mentioned frequently in the preceding chapters, where we found Daniel Dulany the prime mover in the English Statutes controversy, and prominent in most of the important legislative proceedings of the period. Were this his only claim upon our attention, it might be interesting to ask who he was and what he did; but yet greater necessity for such inquiry arises from two other considerations: first, the important part played by Dulany, in the latter part of his life, with reference to the economic difficulties set forth above; and, secondly, the importance, after the visit of the Proprietor, of Dulany's position in the official system of the colony. For not only did this make him one of the most powerful men in the province, but also it transmitted to his sons the possibility of a similar power, and in time made of them and their relatives really an

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<sup>1</sup> C. R., April 14, 1733.

official family, which, in the years preceding the Revolution, kept control of the administration of Maryland, rivaling the Governor in political influence.

It will be well to consider these topics in inverse order; we may, then, postpone further consideration of the economic development and devote a few pages to Dulany's earlier career, and to his office holding after 1733.

Of Daniel Dulany's origin and coming to Maryland no contemporary evidence remains. According to a long-established family tradition, he was born in Queen's county, Ireland. His name he originally spelt Delany, and he was cousin to Dr. Patrick Delany, the friend of Dean Swift, some of whose letters to his American relative are in the possession of the latter's descendants. A family quarrel "made him quit the University of Dublin while yet a youth and leave his country for Maryland, where he arrived almost penniless and would have been indentured for a term of years to pay his passage but for the kind aid of Mr. Plater."<sup>2</sup> This was Colonel George Plater, of St. Mary's county, who had been Attorney-General of the province, and who now took the young Irishman into his law office.

No small part of Dulany's rise was due to his social connections. His first wife, the tradition relates, was a daughter of his benefactor.<sup>3</sup> After her death he seems to have left St. Mary's for the newer county of Prince George's, where he began to acquire land. Soon he married again, this time Rebecca, daughter of Colonel Walter Smith, of Calvert county, by which alliance he established another strong connection with wealthy families in the province.

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<sup>2</sup> The oldest document for this story—from which the sentences quoted are taken—is a note on the first leaf of a prayer book, written therein by the owner, Daniel Dulany, 3d (grandson of the first), prior to 1824.

<sup>3</sup> The tradition relates that Dulany married Col. Plater's daughter, but entries in the Maryland records indicate that his first wife may have been Charity Courts. As this first wife died without issue, her identity is rather of genealogical than general interest.

About 1721 he changed his residence to Annapolis, which as the capital of the colony was now entering upon that genial life, which henceforth made it celebrated. With this city he was thereafter identified, and served as vestryman,<sup>4</sup> alderman and recorder.<sup>5</sup> Not long after the death of his second wife, in 1737, he married a third, Mrs. Henrietta Maria Lloyd Chew, widow of Samuel Chew, and daughter of Edward Lloyd.<sup>6</sup> By this time he had won his own position, but for the future of the Dulany family this connection thus brought about with the Lloyds and Chews expanded still further their political and social influence. The same result was attained, also, by the marriages of his children.

Daniel Dulany, like his distinguished son, became the leader of the Maryland bar. After his presumed instruction by Governor Plater, he was admitted to the bar of the county court of Charles county, in 1709.<sup>7</sup> Did the records of St. Mary's and Calvert counties exist, we should doubtless find his admission to practice there also. During the same year, he served as clerk to the Lower House Committee on Laws.<sup>8</sup> This was a chance for a valuable education in politics, and prepared him for the later time when he was himself at the head of that committee.

Next year followed his admission to practice in Prince George's county,<sup>9</sup> and, more important, his admission to

<sup>4</sup> St. Anne's Parish Records, 1722 and 1726.

<sup>5</sup> L. H. J., September 22, 1742 shows he was recorder at that time.

<sup>6</sup> The account of Dulany's life, as given above, is based upon the family tradition, embodied in documents belonging to the various branches. Scharf, in his History of Maryland, Vol. II, p. 545, note, and in his History of Baltimore City and County, Vol. II, p. 904, gives two accounts that differ widely in detail, and refers to no authority for either.

<sup>7</sup> Charles County Court Proceedings, Liber B, No. 2, p. 608. The formal statement, dated August 9, reads: "Mr. Daniel Delaney was admitted and sworne one of the Attorneys of this Court, he having taken the oaths appoynted, and signed the test, etc."

<sup>8</sup> Lower House Journal, November 2, 1709, p. 229.

<sup>9</sup> Prince George's County Court Proceedings, Liber D, p. 320.

the bar of the Provincial Court.<sup>10</sup> About the same time, also, came the first step in his official career; a career which, when followed out at length, illustrates no small part of the constitutional machinery of the province. The office of "Clerk of the Indictments, or Prosecutor of her Majesty's Pleas in the County Courts of Charles and St. Mary's Counties"<sup>11</sup> was, perhaps, not as important as its title would suggest, but it was a move towards the place of Attorney-General, which Dulany obtained about ten years later.<sup>12</sup> During this interval there is little of his personal history to tell. The court records show that he was busily employed in practicing before the provincial and county courts. One item of greater interest appears. In 1716-17 his name is found enrolled among those admitted on February 21 of that year, to Gray's Inn, London,<sup>13</sup> which leads us to conclude that Dulany wished, like many American lawyers from that time on, to add to his knowledge derived from books and to his practical training at home, the advantage of direct contact with the law schools of the mother country. Nor can we doubt that, brief as his stay in England was, he was able to examine the state of political feeling at this time, and that he was affected by the political doctrines which were then in vogue. Upon his return to America he held for a short while the clerkship of Prince George's county,<sup>14</sup> declined reappointment as "Clerk of the Indictments," and after his second marriage moved his residence to Annapolis.

<sup>10</sup> McMahon, *Historical View*, p. 355.

<sup>11</sup> The commission is to be found in Charles Co. Ct. Pro., Liber D, No. 2, back of volume.

<sup>12</sup> The legal duties of these officers, as regulated by the Act of 1715, Chap. 48, will be found outlined in the index to Bacon's *Laws of Maryland*, s. v. *Attorneys*.

<sup>13</sup> Foster, J., *The Register of Admissions to Gray's Inn, 1521-1889*, p. 362. On the education of Americans at the Inns of Court in Stillé, *Life of John Dickinson*, pp. 22 ff. Stillé does not, I think, give sufficient importance to the possible influence of the Law of Nature and the theory of natural rights upon English lawyers.

<sup>14</sup> Prince George's County Court Proceedings for that year, *passim*.

To Dulany Governor Hart seems to have taken a dislike. Upon one occasion the Governor expressed to the Upper House of Assembly an indignant complaint that Col. Thos. Addison "has been affronted by Daniel Dulany, a Practitioner of the Law by calling him a little Rascalous Fellow and desires of this House to know what redress can be made to that member Considering that as his Excellency is pleased to observe that the s<sup>d</sup> Col. Addison is an honest Protestant and Lover of the King and Country, and that the s<sup>d</sup> Daniel Dulany is a noted favorer of the Papists."<sup>15</sup> It is pleasant to note that this dire indictment led to no serious results, and that no feud existed between the families of Addison and Dulany.<sup>16</sup> The gist of the matter is that Dulany's social relations and marriages had identified him with some of the old landed families of Maryland, who were not favorable to Governor Hart, and desired his removal. The new Governor, Charles Calvert, was able to smooth matters over, and to congratulate the Assembly on the greater harmony that prevailed.

In this same year Daniel Dulany appeared before the Assembly as counsel in an important land suit.<sup>17</sup> By the next year he had been promoted to one of the greater offices of the province, the first of several which were to fall to his lot. Doubtless as a part of the conciliatory policy of the new Governor, Charles Calvert, he was made Attorney-General,<sup>18</sup> in which capacity he served for many years. This office had been definitely established in the middle of the seventeenth century, and now the Attorney-General's functions copied those exercised by the similar offi-

<sup>15</sup> Upper House Journal, April 24, 1720, p. 664.

<sup>16</sup> For the intermarriage of the two families, see Murray, *One Hundred Years Ago*.

<sup>17</sup> L. H. J., October 27, 1720. This was related to the boundary dispute with the Penns.

<sup>18</sup> Calvert Papers (MS.), No. 266. In this year we find the title first applied to him. He seems to have surrendered the office before 1744, perhaps when he entered the Council. Letter, May 31, 1744, Dulany Papers.

cer in England, while his emoluments were regulated by an act of 1715.<sup>19</sup> He combined in his duties those of the English Solicitor-General, also. Therefore, he not only was the chief prosecuting attorney in criminal cases, and the representative of the Proprietor in all civil suits to which the latter was a party, but also he was called upon to give his opinion, when demanded by the Governor and Council or either House of Assembly.

Lastly, the best testimony to the legal career of Daniel Dulany is found in the first volume of Harris and McHenry's reports, in which by far the greater number of cases belong to the eighteenth century, and of these, throughout the period of his legal career, a majority are accompanied by an argument or opinion of the elder Dulany.

Dulany's first appearance in the Assembly was in the session which began October 10, 1722, when he served as representative of the city of Annapolis along with Thomas Humphreys. The legislative service thus begun by Dulany continued, in the Lower House, for twenty years, and thenceforth in the Upper until his death. Of the canvass we know nothing, but it seems highly probable that his election was part of a carefully arranged programme. He had just received an important proprietary office, yet the formal procedure of the opening—carefully modelled after that of the House of Commons—had hardly been carried out, when Dulany's name appears in the Committee of Laws; and before long he seems to have become chairman. Of the four regular standing committees<sup>20</sup> which now existed—those of Laws, of Grievances, of Accounts, and of Elections and Privileges—this was perhaps the most important, through its great control over legislation of every sort. In 1715, under the guidance of Andrew Hamilton, then one of its members, this

<sup>19</sup> Act of 1715, Chap. 48.

<sup>20</sup> On colonial standing committees, see Jameson, *The Origin of the Standing Committee System in American Legislative Bodies*, in *American Historical Association Report* for 1893, pp. 391-399.

committee, to which Dulany had some years before acted as clerk, had been instrumental in preparing the body of laws referred to above, which "formed the substratum of the statute law of the Province even down to the Revolution."<sup>21</sup>

As suggested above, the labor of this committee, under Dulany's leadership, was chiefly the revival and conduct of the controversy over the extension of the English statutes, which for ten years proceeded through the usual parliamentary routine of bills and resolutions, messages between the houses, and addresses to the Governor and to the Lord Proprietor. To Dulany's resolution, adopted at this session, the reports of the Committee on Laws and other documents, special attention will be given in a future paper.

But this was by no means the only committee of which Dulany was a member. In 1722, for example, he, with his rival Thomas Bordley, was added to a special Committee for Inspecting and Repairing the Public Records.<sup>22</sup> A volume containing the minutes of this committee from 1724 to 1729 is preserved in the Maryland Archives, and to the thoroughness of the commissioners' work is due the preservation of much valuable material that otherwise might have perished. In addition to his work in this committee, and the important labors of the Committee of Laws, to which frequent reference has been made, the records attest Dulany's activity upon many other committees of the Lower House, and joint conferences between the two Houses. Among these, we find committees to originate a friendly correspondence with our neighbors in Virginia, to report a joint address of both Houses, representing the state of trade;<sup>23</sup> to examine into the condi-

<sup>21</sup> Steiner, Restoration, p. 251. McMahon, Historical View, p. 282.

<sup>22</sup> The committee was originally appointed by Act of 1716, Chap. I. Dulany and Bordley were added by Act of 1722, Chap. 14.

<sup>23</sup> L. H. J., September 12, 1731. Here may be found, in the joint committee's report, details as to the foreign trade of Maryland—or rather an exhibition of the difficulty experienced, even at that time, in getting information as to details.

tion of the jail at Annapolis<sup>23a</sup>; to consider the erection of a public school building in the same city. Such was the routine employment of an eighteenth century burgess. Of Dulany's attitude in the case of the attack on lawyers and on the clergy, mention has been made in the preceding chapters. After this considerable excursus, we return to 1733, and to the Proprietor's visit to the province.

Of the personal contact of Dulany with Lord Baltimore we have no knowledge. In 1733, however, he received the important office of Agent and Receiver-General, and also was appointed Commissary-General, which office he was to hold jointly with Benjamin Tasker. Next year he was commissioned as Judge of the Admiralty and is mentioned alone as Commissary. Inasmuch as by 1736 Tasker appears as Agent and Receiver-General, it seems probable that Dulany and he made a "deal" by which he took the Agency and yielded the Commissaryship. These offices Dulany held many years.<sup>24</sup> In 1742 Dulany was promoted to the Council, where he remained until his death.

We may postpone the description of the functions of these offices for a brief statement hereafter, and continue with Dulany's position in the Assembly. When that body met in 1734, Dulany and three others who had received "Places of Trust and Profit from the Government" were disabled by vote of the Assembly from sitting as members.<sup>25</sup> This doctrine had been enunciated before, in the first Assembly to which Dulany was returned, when his colleague from Annapolis, Humphreys, was permitted to take his seat; but it was resolved<sup>26</sup> for the future that any person that shall after election "accept of any office or pension from or under the Government shall (according to the practice of the British Parliament) be Incapable to

<sup>23a</sup> Printed in 2 Md. Law R. 71.

<sup>24</sup> These commissions are to be found in Liber J. R., Maryland Archives (MS.), No. 82, in Maryland Historical Society.

<sup>25</sup> L. H. J., 1734, March 25.

<sup>26</sup> L. H. J., 1722, October 29.

sit or serve as a member in this house by virtue of such election." This principle, which is a reflection of the Act of Settlement, was too great an advance in political doctrine for the Governor, who lectured and dissolved the Assembly;<sup>27</sup> for which action he obtained the Proprietor's approval, coupled with the advice not to give offices while an Assembly was in existence.<sup>28</sup> To the next Assembly, however, nearly all the former delegates were chosen, including Dulany and two of the three other officers, who were now suffered to take their seats. So the matter ended, with the establishment of a precedent used to great effect in the later years of the Proprietary government. That Dulany's popularity was not involved one may believe from the fact that at the next session not only was Dulany re-elected but was chosen also for Speaker of the House. He excused himself, however, on account of ill health.<sup>29</sup> Four years later, moreover, the county of Anne Arundell, as well as the city of Annapolis, elected him as representative. Forced by the Assembly to elect for which he would sit, he chose the county.<sup>30</sup>

By the Proprietor's visit the stormy agitation of the previous decade was stilled for a few years. From 1732 on the ayes and noes are recorded, and thus the attitude of individuals is much more easily determined than in the earlier period. As one turns the pages of the Lower House Journal during the years from 1733-43, one finds that to a period of good feeling succeeds another era of bitter strife, which develops its fullest intensity in 1738-39. The questions at issue were of a somewhat different character. The tobacco trade, though according to all accounts being still in a low condition for awhile ceases to be of first interest, and the radical party attempts the diminu-

<sup>27</sup> L. H. J., March 25, 1734. See Morley, *Manual of English Constitutional History*, p. 162.

<sup>28</sup> Calvert Papers (MS.), No. 52, pp. 48-9.

<sup>29</sup> L. H. J., March 20, 1734-5.

<sup>30</sup> L. H. J., 1738.

tion of the Proprietary revenues. Over the tobacco duty for the support of government; over the disposition of money arising from licences for ordinaries or inns; and over that from the fines and forfeitures; over the territorial policy of the Proprietor; over the port duty; over the composition for alienation fines and quit rents; over the fees of licenses; over the proposed Governor's house, and over the fees of officers, the Lower House of Assembly quarrelled with Proprietor, Governor and Upper House. In this period of conflict Dulany was as stout an upholder of the Proprietary interest as, in the English Statutes controversy, he had been of the popular cause. The records of ayes and noes often presents his name as almost alone opposed to the majority in the Lower House. Noticeable also is the fact that he is no longer prominent in committees or joint conferences.<sup>31</sup>

Into the details of most of these struggles it is not the part of this paper to enter. To one, however, that over the officers' fees, reference has been made already, and its connection with the economic situation of the province has been pointed out. In 1733, upon the failure of the Assembly to pass a bill regulating fees, the Lord Proprietor by proclamation established the legal charges of offices, following in general the rates of the law of 1719.<sup>32</sup> Collection was made enforceable by a writ of execution.

Under the influence of the Proprietor's presence the proclamation was accepted without much opposition. But after attempts in 1735 and 1736 the Lower House in 1738 entered upon a violent attack upon the regulation of fees by the proclamation of 1733. On May 16 the Committee of Grievances made a report which declared that the levying of the fees of 1733 produced great hardship, especially

<sup>31</sup> For example, May 29, 1739, Dulany and Calder vote in the negative on the question of concurring with a report of the Committee on Grievances. The vote is to concur: 41 to 2. Again, May 28, Dulany and Hoopes stand 2 to 44 on a question concerning a report on Officers' Fees.

<sup>32</sup> C. R., April 14, 1733.

upon poor tradesmen and artificers, who grew no tobacco and were forced to buy it to pay fees; that by "the Common and Statute Laws of our Mother Country Great Britain which of undoubted right and by the resolves of your honourable house the subjects here have and are declared to have, a right to enjoy," such fees were regulated by courts of justice or acts of Parliament; that in Maryland precedent was in favor of the regulation by the Assembly, and that "Such proclamations or orders of Council were invasions of the fundamental constitution of this province under the royal charter and against the lawful rights and liberties of his Majesty's liege subjects."<sup>33</sup>

Next year the Upper and Lower Houses failed to agree to a fee bill; the Lower House urged a comparison with the fees in Pennsylvania and in Virginia, while the Upper declared its conviction of the Proprietor's full right to settle fees,<sup>34</sup> and obeyed steadfastly their instruction to accept a law for fees only on condition that its provisions should be perpetual. Resolutions of the Lower House declared this requirement too dangerous for them to accept and stated that such exercise of power by the Proprietor was without foundation and inconsistent with the liberty, property and quiet of his Majesty's liege subjects in Maryland.<sup>35</sup> The Committee of Grievances reported as they had the previous year, and then followed a long address from the Lower House to the Governor, enumerating several grievances and attacking especially the Proprietor's prerogative in the regulation of fees, the attitude of the Council, and the use of a negative by that body, composed, with a single exception only, of such as hold the chief offices and posts of profit in the government.<sup>36</sup>

In spite of all these resolutions, many of which in their terms suggest reference to the resolutions of 1722, and notwithstanding subsequent attempts, no fee law was

<sup>33</sup> L. H. J., May 16, 1738.  
<sup>35</sup> L. H. J., June 2, 1739.

<sup>34</sup> L. H. J., May 30, 1739.  
<sup>36</sup> L. H. J., June 5, 1739.

passed for eight years, when, in the tobacco inspection law of 1747, a table of fees was included.

This controversy of 1739 is of interest, however, not only from its association with the many other grievances of the period, but most of all because in the matter at issue the course of events and the arguments on the respective sides, it anticipates the yet greater battle of 1770-73, when the proclamation of Governor Eden, issued under very similar circumstances, stirred up yet greater strife, and the famous controversy followed between "Antilon" and "The First Citizen," under which pseudonyms were thinly veiled the personalities of Charles Carroll of Carrollton and Daniel Dulany the younger. The popular verdict of the pre-Revolutionary period awarded the victory to Carroll. Whether the technical advantage of law was not with Dulany is still a moot point. But without entering upon that discussion, one readily understands how the younger Dulany, who is remembered for his argument against the constitutionality and the impolicy of the Stamp Act, should by inheritance and training be forced to support the prerogative in the matter of the officers' fees.

Of Dulany's service as Attorney-General we have already spoken. The office of Agent and Receiver-General, now added to the former, was connected with the position of the Proprietor as territorial lord of a vast fief. How the land system of Maryland was organized at first, and what important changes took place, may be found described at length in Dr. Mereness' "Maryland." Here, therefore, the barest outline will suffice. During the Royal government of the province, the interests of Lord Baltimore as landholder, which previously had been intrusted to a land council, were given into the charge of Henry Darnall, who was called Agent and Receiver-General, the latter title having reference, of course, to the revenues arising from the land.<sup>37</sup> In 1712, while Dulany was mak-

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<sup>37</sup> Mereness, p. 61.

ing his first steps in the profession of law, Darnall was succeeded by the founder of, perhaps, the only family which surpassed in wealth that of the Dulany's. This was Charles Carroll, a Roman Catholic, and a thorn in the flesh of the Royal Governors, especially of Colonel Hart.<sup>38</sup> In the bickerings between the representative of the Crown and the representative of the Proprietor, the question at issue was the discrimination between the public and the private functions of the land office; and the result, as Mereness says, "indicates that the settlement of judicial questions relating to title, the custody of the record of titles, and some control over surveying were public, while little more than those most essential for securing the legitimate revenue were private in nature. This meant that the Proprietor was no longer to be regarded as the absolute lord of a fief, but that with the exception of his having a few extra and unusual sources of revenue (and even the right to those was already disputed) he was only the chief landholder in the province."<sup>39</sup>

No sooner had the government been restored to Charles Calvert than his guardians issued to Carroll a commission with such extended powers as to interfere with the prerogatives of the Governor.<sup>40</sup> This dangerous rivalry was ended by lessening the importance of the Agent; which in turn was brought about by the act of 1717,<sup>41</sup> which gave to the Proprietor, in exchange for the quit rents and alienation fines due from the land, a fixed compensation paid for by duties upon the export of tobacco. Carroll's political power was injured, also, by the laws against Roman Catholics, which, largely through his own fault, were at this time made more severe. This agreement was continued from time to time, though each side thought the

<sup>38</sup> Rowland, Life of Charles Carroll of Carrollton, pp. 2-14. Steiner, Restoration, *passim*.

<sup>39</sup> Mereness, p. 63.

<sup>40</sup> Ibid., pp. 63-4. Steiner, Restoration, pp. 265-6.

<sup>41</sup> Act of 1717, Chap. 7.

other had the best of the bargain. But in 1733 it was not renewed, and the office of Agent again rose to importance. For the details of Dulany's administration, which lasted only three years, there is little documentary evidence. "None of the successors of Darnall and Carroll were men of such diligence and faithfulness,"<sup>42</sup> is the verdict of Mereness on the later management of the land office. About so brief a tenure as Dulany's it is hard to judge, but if Dulany was not thorough in his work, it is strange that he was advanced to the more important position of Commissary. Moreover, in 1735, the Assembly acknowledged without reservation that they had been mistaken in giving up the agreement concerning the quit rents and alienation fines, which indicates that the claims of the Proprietor had been effectively pressed.

Before passing to the commissaryship, we may cite one illustration of the work which fell to the Agent. In the provinces of Maryland and Pennsylvania, one of the prerogatives of the Proprietor (based upon the analogy of the powers of the King, by the Common Law) was the licensing of ferries. In Pennsylvania this right was disputed by the legislature as early as 1693.<sup>43</sup> Penn in 1684 "had assented to an act establishing certain ferries at the expense of the counties where they were situated. The rates of ferriage were fixed by this act, and it was provided that the profits should be paid into the county treasury. But in case private parties were willing to maintain a ferry at specified localities, they might receive the profits."<sup>44</sup> From this time on the legislature considered this one of its functions and in 1736 resolved that the granting by the Proprietor of licenses to keep ferries and to regulate the rates of ferriage without the concurrence of the legislature was prejudicial to the general interests of the province.<sup>45</sup>

<sup>42</sup> Mereness, p. 65.

<sup>43</sup> Shepherd, History of Proprietary Government in Pennsylvania, pp. 81-82, Columbia University Studies, Vol. VI.

<sup>44</sup> *Ibid.*, p. 82.

<sup>45</sup> *Ibid.*, pp. 82-83.

In Maryland, with its many streams branching into the country, the question of ferries was even more important. Ferries had been regulated by law as early as 1638.<sup>46</sup> When, therefore, about a hundred years later, the Proprietor of Maryland gave instructions to his agent to require ferry owners to secure licenses from him only, trouble arose at once. In 1733 there appears upon the records of Baltimore County Court a letter from Daniel Dulany, the Attorney-General, which imparts the Proprietor's orders to the County Court, to desist from licensing ferries and taxing the inhabitants for the same. Such persons desiring licenses should apply to Dulany, who has express authority as his Lordship's Agent to grant such licenses. The court made the somewhat laconic answer that their right to license ferries has been established by custom, and they will take no further action than to enter Daniel Dulany's letter, his Lordship's instructions, dated June 18, 1733, and their reply, upon the records of the court.<sup>47</sup> This was nullification, with a vengeance! The claim was pushed by the Proprietor, and his further instructions drew from the Committee of Grievances a resolution which appealed to Virginia precedents and declared the Proprietor's action illegal. So great was the opposition that this, like so many other prerogatives of the Proprietor, was, after a while, surrendered.<sup>48</sup>

In 1736 the office of Agent appears to have been given to Benjamin Tasker. This gentleman was another member of the official aristocracy then building up, and when, some years later, the younger Daniel Dulany married Colonel Tasker's daughter, the two families were brought into a still closer "community of interest."

While very many writers have pled in favor of one or another theory as to the religious history of early Mary-

<sup>46</sup> Maryland Archives, Assembly Proceedings, Vol. I, p. 78.

<sup>47</sup> Baltimore County Court Proceedings, 1733.

<sup>48</sup> Mereness, pp. 88-89. That the same attempt was made in other counties appears from a similar entry on the records of Talbot Co. See Harrison, *Memoranda of the Annals of Talbot Co., Industrial Annals*, Vol. III (Maryland Historical Society, MS.).

land, or have battled over the Toleration Act, entirely too little attention has been paid, until recently, to the institutional relation of Church and State. The office of Commissary-General carries us directly to this relation. The origin of the Commissary's functions—exercised to-day by the Courts of Probate—is very interesting. In England jurisdiction over these matters lay in the ecclesiastical courts, and had the Anglican Church from the first been fully reproduced in the American colonies, the Bishop of London's courts, under the administration of his Commissary's, might here also have dealt with testamentary proceedings. But the colonization of the English people carried with it secularization. In the Royal colonies these functions were vested in the Governors.<sup>49</sup> In the palatinate of Maryland they were included in the princely power given by charter to the Proprietor, who had no idea of yielding them back to the Church, Roman or Anglican, and delegated them, as his other prerogatives, to civil officers of his own choosing.

This civil office of Commissary-General appeared as early as 1638, when it was given by Act of Assembly to Secretary John Lewger, who held it in common with several other offices. In 1673 it was united to the Chancellorship, but after 1715 it was considered separate. Originally an inferior position, it increased in importance until it equalled that of the Secretary. Daniel Dulany the elder was Commissary from 1733 till his death, and when, within a few years after that event, his eldest son was Secretary, and his second son Commissary, the complaint that the offices were tending to become hereditary seems to have had some color of justice. In Dulany's administration, as before, one of the points most criticised was the Commissary's claim that the services of his deputies should carry with them a second fee for passing accounts of the estates of deceased persons. This was bit-

<sup>49</sup> See, in Perry, *Historical Collections*, Vol. IV, p. 59, Bray's account of Governor Seymour's irritation at the suggestion that testamentary jurisdiction should be given to the Bishop of London's Commissary.

terly opposed after awhile by the legislature, and the matter remained a subject of controversy.<sup>50</sup> In the general performance of his duties, however, Dulany left behind him a record of integrity and kindness.

Of another of the offices held by Daniel Dulany there is little to inform us, except the lengthy and quaintly worded commission.<sup>51</sup> This he receives from Governor Ogle, "commander in chief in and over the Province of Maryland, and Admiral thereof," and it impowers him "to proceed hear and determine all causes, civil and maritime," and continues very minutely to specify what such "causes" may cover. Of the records of the Court of Admiralty, over which Dulany was thus appointed judge, nothing remains among the calendars and archives of the State, nor are there any cases included in Harris and McHenry which would throw light upon Dulany's judicial conduct. It is not improbable, however, that these court records do exist, unknown, at Annapolis and that with the other court records of the eighteenth century they may be put to good service for information as to the provincial history covered by them.

About the time of his appointment as Commissary, Daniel Dulany was sent upon a diplomatic mission to Philadelphia. This was in connection with the long drawn out litigation between the Penns and the Baltimores over the boundary line between Maryland and Pennsylvania, a controversy which has been thoroughly discussed by so many writers as to make it needless to narrate here any but the most essential facts. Both Daniel Dulany the elder and his son were called upon to act in official relation to the dispute, in its later stages, and their employment in such service may fitly be discussed in this place. In 1732 Lord Baltimore and the Penns arrived at an agreement, which proved, however, to be unsatisfactory, and in 1735 the Penns were directed to

<sup>50</sup> Mereness, p. 244.

<sup>51</sup> The Commission is dated May 22, 1734, and is to be found in Liber, J. R., Maryland Archives (MS.) No. 82, in Maryland Historical Society.

institute proceedings in chancery for the decision of the whole matter.<sup>52</sup>

Meanwhile, towards the close of 1736, the petty warfare which for some time had been waged upon the border between the provinces reached a degree of violence which threatened to bring the two colonies to a passage at arms. Two years before, in May, 1734, the Governor of Pennsylvania had sent to the Governor of Maryland, as Commissioners to discuss some remedy for the existing state of things, Messrs. Hamilton and Georges. They had accomplished nothing, however, because their powers had been very much limited.<sup>53</sup> On November 24 the Sheriff of Lancaster county, Pa., in pursuit of legal process, attempted to arrest Major Thomas Cresap, who dwelt upon the Susquehanna river some distance north of the present boundary line.

Cresap refused to yield, and with five others held his house against the Sheriff's forces. But numbers prevailed and Cresap was taken after he had been wounded and one of his adherents killed. On the other hand, similar charges of violence against Marylanders were made by the Governor of Pennsylvania.<sup>54</sup>

It was to protest to the Pennsylvania government against this lawless state of things that, in December, 1736, Edmund Jennings, the Secretary, and Daniel Dulany, the Attorney-General of Maryland, members of the Upper and Lower Houses of Assembly respectively, were sent to Philadelphia by Governor Ogle. They were instructed to request the assistance of the government of Pennsylvania "for effectually bringing to a just Punishment the inhuman Actors and Abettors of that savage Violence [against the Marylanders], as well as for restoring to Liberty and to a full Compensation for all their Hurts and Damages, the Persons of such who

<sup>52</sup> See McMahon, *Historical View*, pp. 39-40. Mereness, *Maryland*. Scharf, *History of Maryland*. Shepherd, *Proprietary Government in Pennsylvania*. The Calvert Papers and the Penn MSS.

<sup>53</sup> Colonial Records of Pennsylvania, Vol. II, pp. 547-560.

<sup>54</sup> McMahon, *Historical View*, p. 40.

were hurried away into Confinement, and perhaps, may be there still detained by that outrageous Multitude."

The Pennsylvanians were firmly convinced that Cresap's house was in the territory of Pennsylvania, and hence that their actions were not subject to review by the authorities of Maryland; the Marylanders were equally confident that he was an inhabitant of Maryland, and hence that his arrest by the Pennsylvania authorities was illegal. Dulany and Jennings were obliged, therefore, to return to Maryland having accomplished nothing.<sup>55</sup>

Two petitions, one from the Governor and Council, and one from the Commissary and clergy of Maryland, elicited an order from the King in Council, bearing date August 18, 1737, enjoining the Governors of the respective provinces to put a stop to the riotous proceedings which had been carried to such an excess. In pursuance of another agreement and another order, issued a year later, a temporary line was run in 1739. This remained the boundary until in May, 1750, the suit in chancery between the Penns and Lord Baltimore was terminated by a decree of Chancellor Hardwicke.<sup>56</sup> In accordance with this order, commissioners were appointed on June 28, 1750, by the respective Proprietaries, those for Maryland being Benedict Calvert, Benjamin Taske, Edmund Jennings, Daniel Dulany, Robert Henry, George Plater and John Ross. They were to serve until April 30, 1752.<sup>57</sup> These proceedings were, however, interrupted in 1751 by the death of Charles and the accession of Frederick, Lord Baltimore. Opposition on the part of the new Proprietary resulted in more litigation, which was however terminated by the agreement of 1760.<sup>58</sup> By this agreement new commissioners were appointed and the boundary line was determined in accordance with the decree of 1750 and the agreement of 1752. The commissioners for Mary-

<sup>55</sup> IV Colonial Records of Pennsylvania, pp. 115ff.

<sup>56</sup> McMahon, Historical View, p. 41.

<sup>57</sup> Calvert Papers (MS.), No. 153.

<sup>58</sup> McMahon, Historical View, p. 44.

land, as then appointed, were Governor Sharpe, Benjamin Tasker, Jr., Edward Lloyd, Robert Jenkins Henry, Daniel Dulany, Jr., Steven Bordley and the Rev. Alexander Malcolm. The illness of the younger Dulany, and his departure on a trip to England in June, 1761, closed the connection of the family with what in a few years became known as Mason and Dixon's line.

## CHAPTER IV

### THE TOBACCO INSPECTION CONTROVERSY

Before the financial disputes referred to in the preceding chapter had reached anything like a settlement, Dulany, who had so zealously supported the proprietary interest in the Lower House, was rewarded with a seat in the Council. This board was composed of men appointed by the Proprietor through the Governor, and the tenure was practically for life. The same body constituted the Upper House of the Assembly, and to its members were entrusted also some of the most important offices of state. Naturally, therefore, it was conservative and aristocratic in its nature, and in the pre-Revolutionary period its members were almost necessarily forced into a Tory position. Throughout the period which we have been considering the Upper House was rather inferior to the Lower in the ability to lead, and Dulany's appointment to the higher body was part of an attempt to reconstruct it on stronger lines.

As ayes and noes do not appear in the Records of the Upper House, it is harder to keep track of the actions of individuals, and this part of Dulany's career must therefore be treated very briefly.

Through the eleven years of Dulany's service events were taking place which would properly demand entirely separate treatment. The rise of the wars with Spain and France brought a greatly increased number of letters and instructions from the Royal government to fill the pages of the Council Records. Negotiations with the Indian tribes also occupied a great deal of attention, notably the negotiations with the Five Nations, and the Indian policy of Conrad Weiser. The military activity of the time involved, of course, the raising of money, and over this Governor and Assembly were continually at war.

To complicate the situation still more, old-time rumors of Romanist plots were revived and the province stirred up afresh against those of that faith. All of these developments, however, look forward for their chief interest beyond the elder Dulany's time, and our attention may be confined to a topic in which he was particularly interested—the economic improvement of the province, and especially the passage of the inspection law.

Not very long after his promotion, on February 1, 1743,<sup>1</sup> an address to the Proprietor from the Governor and Council of Maryland, which had been drawn up by Daniel Dulany, was read and approved. This very able document should be read in its entirety, but here only an abstract may be given. The importance of the tobacco crop to the economic welfare of the province, and the deplorable condition of the staple at the present time lead to the statement that many of the factors sent to Maryland to buy were moving to Virginia, for there they can buy better tobacco, though at a higher price. The French, likewise, who used to buy in Maryland, now prefer Virginia. The accounts of sales of the last year's export confirm the apprehension that Virginia will get all the trade. Moreover, this is not because Maryland is inferior in soil or climate to Virginia, for the reverse is the case.

The cause of the difficulty is the lack of restraint and the unwillingness of the people at large to submit to any. The old difficulty with "trash" continues, and gives Maryland tobacco a bad name abroad. The Virginians after many attempts have made a law which has improved their staple so much to give them all the advantages which they have over Maryland, which "are so evident that even the Common People (who are generally enemies to all restraining Laws) are thoroughly reconciled to and fond of this law," and would consider as an enemy to their country anyone who would deprive them of the benefits derived from it.<sup>2</sup>

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<sup>1</sup> C. R., Feb. 1, 1743.

<sup>2</sup> The Virginia Inspection Law of 1730 was continued or amended by no less than seven acts, down to 1745. See Hening's Statutes.

Several attempts to regulate the staple have been made in Maryland, but as they did not serve their purpose and as the people derived no sensible or immediate advantage from them, the people soon grew weary of them and of any legislation, and "it became a generally received opinion that an effectual regulation was quite impossible."

Sometimes a short crop has occasioned a rise in the price which has "induced too many to think that not only a providential but the only remedy." But the increasing difficulties of the situation are now brought home to every one, and all who have examined into the success of the Virginia law are convinced of the absolute necessity of some such regulation here.

To the making an effectual regulation to this purpose there is one great obstacle of which every body is sensible and that is, the specified payments in tobacco which by the present laws the people are obliged to make to the clergy, officers and lawyers, which it would be difficult (if not impracticable) to alter for want of money which obstacle if in some measure removed, would go a great way toward reconciling the people and their representatives to the necessary means of their own happiness and such a legal regulation of our staple as would put it upon an equality with that of your neighbours would in all probability have the desired effect and be equally advantageous to your Lordship and your tenants. The only expedient we can think of or believe practicable is the retrenching the tobacco payments, into which we believe that even the clergy themselves would voluntarily come, notwithstanding the Establishment in their favor, and should the officers or practitioners of the law be less forward to contribute to the publick good, than others, it would render them odious to all mankind and occasion the calamities of the country to be imputed to them; nor would the odium stop there; as to such of ourselves as are entitled either by the offices we hold or our profession, to tobacco fees, we beg leave to assure your Lordship that we would most readily and cheerfully, was it necessary, sacrifice part of our income to the welfare of our country, but in the present case we believe that we should be gainers if a proper regulation was to take place, as the value of what we should then receive would in all probability exceed what we can now hope for.

Besides the pleasure of a happy people, the proposed improvement would have the advantage of inviting new comers into the province in great numbers, and would increase the demand for back lands, "as well as make the present inhabitants to enlarge their possessions and pay their rent." They are fully persuaded of the right of his lordship to fix officers' fees and would avoid doing anything which

might incroach upon his rights. They therefore request his Lordship's concurrence in their desires to the happiness of your tenants.

Almost the same phrases were used in a private letter to Lord Baltimore, written probably about the same time. "I am informed," says Dulany, "that the clergy have declared that they will come into any measures that can be thought proper to relieve the country. Should your Lordship's officers show less forwardness to contribute their parts to the common good, it would render them odious to the whole country and occasion all its misfortunes to be imputed to them. . . . I would cheerfully give up a part of the fees which I am entitled to as a lawyer, as well as part of the profits of the office which I have the honour to hold by your Lordship's favour and bounty, in so pressing an occasion."<sup>3</sup>

Some years were still to elapse before the remedial measure of a thorough inspection law could be successfully carried through. With 1745 we can go again to the Maryland Gazette, where we find in that year and the next a spirited discussion concerning the tobacco situation.

Several letters appear, some arguing for an inspection law, some against it. Nearly all are pseudonymous, and some exhibit excellent literary style. "A. B." "Q in a Corner," "P on a Pinnacle," "Q. B." urges vehemently the pros and cons, and later "A. B." wins alliterative commendation as "the generous advocate for an Inspection Law, who foiled Mr. Q in his corner, Mr. Q. B. and all the Quibblers of the opposition."<sup>4</sup> "A Maryland Planter" continues his argument with a paragraph on the evolution of man from a state of nature, while not long after "A Planter" writes that he has no experimental knowledge of trade, "the few ideas I have of the general nature of it being communicated to me by Mr. Locke and some other authors who have built on the foundation of that great man, whose writings, when

<sup>3</sup> Dulany Papers (MS.) in the possession of the Maryland Historical Society. This collection is of more value for the personal affairs than for the political career of Dulany.

<sup>4</sup> Gazette, June 29, 1748. Was this Dulany?

tobacco bore a price, I was enabled to send for from England, and with which I used to amuse myself at the leisure hours I could then spare from my plantation, tho' now, as our staple is sunk into such contempt, I can neither afford to purchase books, nor spend any time in reading those I have."<sup>5</sup>

The most solid of these contributions is an anonymous essay on the means of improving the trade of Maryland, which in the Gazette of June 2, 1747, receives a cordial endorsement from Daniel Dulany, and in the winter of the same year is published at length.<sup>6</sup> The author comments on the greater care of the Virginians, praises their inspection law, warehouses, and tobacco rates. For Maryland he urges the limitation of the export of all tobacco to two ports, which would also be the chief markets for British goods imported into the province. Thither the planters would resort, men of large fortunes would manage trade, who would not find it necessary to sell when the market was glutted, and the number of ships loaded at one time would be sufficient to ensure a convoy. That the author is well read appears from his quoting Child's Observations on Trade and from his citing for illustration the policy of Colbert in France. More original, perhaps, is his argument as to the effect of such an arrangement upon other sorts of trade, wherein he bears witness to the development of a new economic period by his emphasis upon the grain trade not only in Maryland, but from Pennsylvania. As to the future of these ports, with their shipping and shipbuilding, he is most sanguine, and declares that they will become great cities.<sup>7</sup> He even suggests the employment of the women and children in making up flax for ordinary use, and holds that this

<sup>5</sup> Gazette of June 23-30, 1747.

<sup>6</sup> Beginning Dec. 9, 1747. The number for June 29, 1748 has a humorous and fantastic sketch of the various authors in the Gazette.

<sup>7</sup> We may note in passing that the town of Baltimore, then in its infancy soon fulfilled much of the prophecy of this able letter-writer.

will be advantageous to Great Britain as increasing the demand for finer goods.

This paper, then, takes its place along with Dulany's address and the earlier documents such as "Sotweed Redivivus," by which the public opinion of Maryland was moved towards a proper regulation of the production of tobacco. After all the difficulties which have been described throughout these pages, this goal was finally reached in 1747,<sup>8</sup> when "An Act for amending the Staple of Tobacco, for preventing Frauds in his Majesty's Customs, and for the limitation of Officers' Fees" constituted, as it were, a colonial "Omnibus Bill."

Unfortunately, the text of this law is very hard to find. In accordance with the usage, the text is not given in the journal of either house, and Bacon's Laws of Maryland, usually so helpful in regard to important legislation, fails us here. Bacon states that it was to be in force five years from December 1, 1748, and that another act bearing the same title was passed in 1753,<sup>9</sup> to continue five years more. Then a continuing act was passed,<sup>10</sup> to continue the original act and other amending laws<sup>11</sup> to Dec. 1, 1763. In this latter year Bacon gives the text of the act in full, covering forty-nine pages of his volume.<sup>12</sup>

Consequently it will be better to give a brief resume of the law of 1763, and this is especially reasonable, since with its expiration in 1770 began the famous contest over officers' fees that had to do with Governor Eden's proclamation. Coincident with this arose the struggle over the Vestry Act, for the clergy claimed that upon the expiration of the law of 1763 that of 1702 was re-established and that they were entitled to their full "forty per poll," which claim of course aroused great opposition and much legal controversy, which were unsettled when the Revolution came, except for a com-

<sup>8</sup> Act of 1747, Chap. 1.

<sup>9</sup> Act of 1753, Chap. 22.

<sup>10</sup> Act of 1758, Chap. 7.

<sup>11</sup> Acts of 1754, Chap. 1; 1754, Chap. 3; 1755, Chap. 7.

<sup>12</sup> Act of 1763, Chap. 18.

promise in 1773, which re-established the lapsed inspection act and gave the clergy for the future only 30 lbs. of tobacco, but made no decision as to the validity of the act of 1702, which the opponents of the clergy now called in question.

The text of the law gives ample testimony to the influence of the Virginia inspection laws. Some of the most important provisions are as follows:

No tobacco should be exported in bulk, or taken on board ship at any other place than some public warehouse, after due inspection by officers provided for that purpose. Of these public warehouses some eighty were named, at each of which there should be inspectors appointed by the Governor out of nominees chosen by the vestrymen and churchwardens wherein the warehouse lay. For each inspector a salary in tobacco was provided. The chief duty of the inspectors was to uncase and break every hogshead cask and case of tobacco, and where the contents were found well conditioned, merchantable and clear of trash, the tobacco should be weighed in standard scales, and the hogshead, etc. also weighed, and stamp'd and marked with a hot iron, on the head or bulge with the name of the warehouse at which the tobacco is viewed and also with the tare of the hogshead cask or case, and quantity of nett tobacco therein contained. The tobacco should be cased and nailed immediately after inspection. No inspector should pass tobacco between the last day of July and the first day of November, unless such tobacco was brought to the warehouse before the last day of July. Very severe penalties were laid upon any infringement of these and other regulations. The legal size of hogsheads is specific and weights and scales are regulated.

Upon delivery and inspection of the tobacco the inspectors were required to deliver to the person bringing the tobacco promissory notes for the full quantity, specifying the kind of tobacco; which notes were declared to be current in all tobacco payments, in the county where the tobacco should be inspected. No tender of any debt or duty payable in tobacco should be accounted lawful, unless made in inspector's notes. All tobacco due and payable for public and county levies, parochial charges, and all officers' and attorneys' fees, which should not be paid and discharged in gold and silver should be paid at warehouses in the localities, county or parish where they fell due or where the person lived who owed payment.

The clergy were to receive a levy of 30 lbs. of tobacco per poll instead of 40 lbs., less 5% for collection by the sheriff. Officers and attorneys sending their lists and accounts to the sheriffs of the

several counties for collection should deduct 10 per cent "for convenience," out of every 100 lbs. of tobacco paid in discharge of all officers' and attorneys' fees, and public and county levies, when paid in tobacco, there should be an abatement to the payer of 10 lbs. of tobacco per centum. Clerks of the courts should make the same allowance in taxing costs. For the ease of the inhabitants of the province in paying public and county levies, a deduction of one-fifth should be made out of all the tobacco due (save officers' fees), with which the public are chargeable. And all persons chargeable with the remaining four-fifths and the officers' fees regulated as aforesaid, and all other public dues to pay the same in gold and silver, as regulated by this act. From all debts "that did arise" due before May 16, 1747, payable in tobacco, one-fourth might be deducted, if paid in inspected tobacco at the warehouses.

Other details govern notes, bonds, etc. Those who swear that they have made no tobacco might pay off taxes and fees in gold and silver as regulated by this act.

One of the most important parts of the act was that which established a table of officers' fees, specifying minutely the legal charges of each officer. With reference to another cause of trouble the deputy commissioners, also, were authorized to pass accounts of estates to the amount of £150 without any special commission from the commissary-general.

There is found, also, a table showing the rates in tobacco at which species of gold and silver coins should pass; while regulations abound also, for preventing the presentation of trashy tobacco for the proper nailing and casking; for limitations upon the inspectors, etc.

This was then a very far-reaching piece of legislation. Besides the three-fold purpose expressed in its title, the reduction of the clergy's salary, the general provisions regarding debts—so greatly in favor of the debtor class—and the adoption of the tobacco notes are points especially worthy of notice. The fortune of this law was much better than that of its predecessors. It was not long before its advantages were manifest and opponents were converted to its support. From the clergy, however, discontented complaints were still heard, for which Hawks feels called upon to censure that body. Hawks speaks<sup>15</sup> of the Act of 1747 as merely con-

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<sup>15</sup> Hawks' Contribution, Vol. II, p. 226.

tinuing the act of 1730 which permitted one-fourth of the assessment of tobacco for the clergy's salary to be paid in grain or money at the option of the planter; but that this is a mistake, and that the provisions of the Acts of 1747 and 1763 were the same is shown by a letter to the Bishop of London from Reverend Alexander Adams, of Stepney Parish, in Somerset county, who complains that they have not only deducted one-fourth of the 40 of tobacco per poll, but have given liberty to the lazy to pay what remains in 12s. and 6d. paper currency for 100 lbs. of tobacco, which is not nigh the value of tobacco at present,<sup>14</sup> and he urges the Bishop to speak to Mr. Onslow, Speaker of the House of Commons, that such act should not be renewed. The next year he alleges that "this fatal law has picked my pocket about £200 during the five years it existed."<sup>15</sup>

Mr. Adams was now a very old man, and could not, perhaps, see things in a fairer light. In somewhat refreshing contrast is the sentiment of Dulany, expressed in the private letter to Lord Baltimore, quoted above. The parson states one important fact that does not much favor his cause, i. e. that the value of tobacco had risen. Of this result of the inspection law we have proof in the recorded prices of tobacco, and Mereness has already quoted an item in the Gazette which testifies to the improvement in the weight and quality of Maryland tobacco.<sup>16</sup>

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<sup>14</sup> The letter is to be found in Perry, Historical Collections, Vol. IV, pp. 326-7. The date is Oct. 5, 1751.

<sup>15</sup> Ibid., pp. 327-329. Sept. 29, 1752.

<sup>16</sup> Maryland Gazette, Aug. 20, 1752. Mereness, Maryland, p. 118.

## CHAPTER V

### DULANY AND IMMIGRATION

That excellent remedy, the tobacco inspection law, was not, however, the only cause of the economic improvement which changed the distress of the second quarter of the eighteenth century into the prosperity of the third. At least two other elements must be noted: first, the production of other things than tobacco, and second, the extensive immigration of other than the old English stock.

The advisability of cultivating more than the one staple product was not in the least a new discovery. Throughout the seventeenth century, both in Virginia and in Maryland, the Assembly had recognized the necessity of some variation in the crop, but nature was stronger than law, and little could be done. For example, attempts were made to produce naval stores, and especially hemp, but the results were unsatisfactory. As far back as 1664 a memorial to the Lords of Trade led to the removal of the duties upon importation from the plantations into England of hemp, pitch and tar,<sup>1</sup> while a year earlier Governor Charles Calvert set an example to the Maryland planters by cultivating, in addition to wheat, oats, peas and barley, some quantities of flax and hemp.<sup>2</sup> The legislature encouraged the production of all these commodities, often by giving them a fixed value as currency: as for example, in 1682 (the year of the plant-cutters' riot in Virginia), when corn, wheat, oats, barley, rye, peas, pork, beef and bacon were all made legal tender for all debts, etc., except for the Proprietor's rents and the public levies.<sup>3</sup> Such laws as this had been passed before;

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<sup>1</sup> Bruce, *Economic History of Virginia*, p. 393. Lord, *Industrial Experiments in the British Colonies of North America*, p. 5.

<sup>2</sup> Calvert Papers (printed), Vol. I, p. 246. Mereness, *Maryland*, p. 120.

<sup>3</sup> Sparks, *Causes of the Maryland Revolution of 1689*. J. H. U. Studies, Vol. XIV, p. 558. Sparks gives references to the items in the Council Proceedings.

the raising of flax and hemp had the additional encouragement of a bounty, besides the quality of a legal tender for debts. Bounties were offered, also, for the production of the best manufactured pieces of linen. For a brief period woolen manufactures were subsidized. None of these measures had any great results, nor was much accomplished by a discrimination which freed hands producing other crops than tobacco from their share of the tax levied, between 1717 and 1733, in composition for the Proprietary quit rents and alienation fines.<sup>4</sup>

The activity of the Lords of Trade resultant upon the war of the Spanish succession and the bounty act of 1705 led to an attempt to produce for naval stores not only hemp but tar and pitch.<sup>5</sup> Nor yet in this direction did Maryland progress very far. Everyone knew how to raise tobacco, and something—if only credit—could be gotten for it, therefore these attempts to stir a conservative agricultural people from the ways of their fathers were unsuccessful. But the laws that were passed, and the continued efforts for better ones, show that the wiser minds of Maryland were sincerely trying to improve the condition of the province. Among these men Dulany took his place. In 1731 he introduced a bill to encourage the making of linen cloth, within this province, of flax and hemp and of the growth thereof;<sup>6</sup> while later his interest appears in a somewhat humorous way, when we learn by an advertisement in the Gazette<sup>7</sup> that he desires to gain possession of certain "Essays by the Dublin Society towards the better culture and manufacture of flax," a volume which, apparently, he had loaned to someone else.

The development of a distinctly different form of agriculture was not to be successful until a new element was added to the population. Throughout the colonial period individ-

<sup>4</sup> Mereness, Maryland, p. 121.

<sup>5</sup> Lord, Industrial Experiments in the British Colonies of North America, p. 65.

<sup>6</sup> L. H. J., July 17, 1731.

<sup>7</sup> Gazette for March 3, 1746-7.

uals or small groups of other than English people had come into the province, and the statute book contains many laws for the naturalization of such persons. But by the end of the Royal government the lands in the tidewater sections of Maryland had been pretty well taken up, and when in the eighteenth century there came about the immigration of the Germans into America it was generally the back districts of the seaboard colonies in which they were permitted to settle. In Maryland, Dulany, like many of his official companions, had, very early in the opening of his career, given much attention to the acquisition of large tracts of land. In 1729 he advertised that he had lands in three counties, Prince George's, Baltimore and Kent, which he desired to lease upon moderate terms.<sup>8</sup> These he increased by subsequent purchases and patents in other counties. The most important results followed the investments made in the western part of Prince George's county, which at that time constituted the western frontier of Maryland, and which later became Frederick county.

The wisdom of this policy, though much doubted at the time, was speedily vindicated. Eddis, writing from Annapolis in 1771, after describing the region around Frederick, proceeds: "Frederick Town is the name of this settlement. Within fifty years, the river Monocasy, about three miles to the Eastward, was the extreme boundary of cultivated establishments, and Mr. D—, father to the present Secretary of the Province, was much censured for having procured considerable tracts of lands in the vicinity of that river, which it was generally supposed could not even repay the trifling charge of the purchase, for many succeeding generations."<sup>9</sup>

That his acquaintance with this section, and with Baltimore county, was the result of personal observation, is shown by a letter which, in 1744, he wrote to Lord Baltimore: "I have not been long return'd from a journey into the

<sup>8</sup> Maryland Gazette, Annapolis, 1729. In 1746, Sept. 9, he advertises that he has walnut wood for sale—to saw into plank.

<sup>9</sup> Eddis Letters, p. 99.

back woods, as far as to the Temporary line between this Province and Pennsylvania, where I had the pleasure of seeing a most delightfull County, a Country My Lord, that Equals (if it does not exceed) any in America for natural Advantages, such as a rich and fertil Soil, well furnished with timber of all sorts, abounding with lime stone, and some fit for building, good slate and some Marble, and to Crown all, very healthy.”<sup>10</sup>

For some time before this, large numbers of Germans had been migrating westward through Pennsylvania, and many of them found their way into Maryland. Direct immigration to the latter province also had been encouraged by the Proprietor and his advisors.<sup>11</sup> Dulany, convinced that the exclusive cultivation of tobacco was a disease slowly but surely draining the economic life blood of the province, used every effort to increase this immigration of a class of settlers devoted to general agriculture.

A curious document found in the Calvert Papers, a “Translation from Dutch Languidge transmitted to us by Mr. Dulany” and signed by twenty-five names, relates that

“ We whose names are hereunto subscribed, all natives of Germany, by this do acquaint our Countrymen with our Settlement (some years since) in ye province of Maryland, into which Province we came from Pensilvania for ye sake of better Land, and easier terms, and we assure you, that the Land in this Province is very fertile and produces every thing in great Abundance, we here Enjoy full Liberty of Conscience, ye Law of the Land is so constituted, that every man is secure in ye enjoyment of his property, ye meanest person is out of reach of oppression, from ye most powerfull nor can anything be taken from him without his receiv-

<sup>10</sup> II Calvert Papers, 116.

<sup>11</sup> In the Calvert Papers (MSS. No. 52, pp. 54-5), is to be found a form in French designed to instruct possible immigrants in the terms proposed by the Lord Proprietary. This mentions Rotterdam as the chief point of departure, in Europe, and emphasizes as inducements to colonization, the protection of their rights by law and from religious persecution.

ing satisfaction for it, all such of our Countrymen who have an inclination to settle in this province and will be industrious, cannot fail of a Comfortable Subsistance. One of the Principle Gentlemen of this Country, Mr Dulany, who Lives at Annapolis, the Capital of this Province, was so kind as to assist us with 306 Pistoles and to free us from ye Captain's power, we are persuaded that this Gentleman will be Serviceable to aid and assist all Germans that will settle in this Province.”<sup>12</sup>

The earliest large settlement of the German immigrants seems to have been that at “Monocacy,” near the present Creagerstown in Frederick county. In 1745, the town of Frederick was laid out on part of “Tasker’s Chance,” a tract of 7000 acres, patented by Benjamin Tasker in 1727, and sold to Daniel Dulany in 1744. The remainder of this grant was sold by Dulany in tracts of 100 acres or more, at a rate generally much lower than the purchase price. This has been thought to indicate that he acted as agent for the people who had already settled upon the land and had perhaps acquired some rights therein.<sup>13</sup> However this may be, he became thoroughly identified with the interests of this section of the country, and when Frederick county was set off from Prince George’s in 1748, he was made chief of the County Justices or Commissioners.<sup>14</sup> To the town of Frederick Dulany gave many gifts of land for churches and other public institutions.

One feature of the booming of this western town is truly mediæval. In a Gazette of 1747<sup>15</sup> Dulany advertises that “the subscriber hath obtained a Patent for keeping a Fair at Frederick Town near Monocasy on the 21st day of October and the 10th Day of May next, each Fair to continue three days, and for a Market to be held there every Saturday after the first of November next. All persons who will

<sup>12</sup> Calvert Papers (MSS.), No. 52, p. 115.

<sup>13</sup> Schulz, First Settlements of Germans in Maryland.

<sup>14</sup> Frederick County Court Proceedings, 1748-9.

<sup>15</sup> Maryland Gazette, No. 123, Sept. 1, 1747.

bring any Goods, Merchandise, Cattle or any thing else to the Said Fair or Market to sell shall be free and exempt from the payment of any toll, stallage, Piccage or any other charge for the term of Five years next ensuing this last day of August, 1747.—D. Dulany."

In spite of the liberal promises made to them, these German colonists did not escape the pressure of the feudal land rights of the Proprietor. In 1748 several Germans presented a detailed list of grievances against the Sheriff of Prince George's and complained of the forcible exaction of their back rents, even threatening to leave the province.<sup>16</sup> In the constitutional struggles which marked the closing years of the Proprietary government, these western counties were active on the Democratic side, and already exhibited some of those characteristics, political as well as economic, which differentiated this from the older section of the country.

How great was Dulany's interest and influence in introducing these colonists into Maryland could require no better statement than is given in an old letter book, now in the possession of the Maryland Historical Society. Herein are contained the letters written in the months October, 1752 to October, 1753, immediately before the attack of illness which caused his death. In several of these letters he devotes considerable space to the German immigration, and two of the twenty-one are directed to agents in Rotterdam. Of the very great extent numerically of this addition to the population we gain some idea from his statement that "we have had about a thousand of them this fall,"<sup>17</sup> and as to the details of the commerce in the Germans the following excerpt may be of interest:

"The masters," he writes to Rotterdam, "who have the command of these ships ought to be very carefull of the provisions, to be kind and humane to the people and to see that

<sup>16</sup> Upper House Journal, June 7, 1748.

<sup>17</sup> Letters to Calvert, Annapolis, October 30, 1752.

everything is kept clean. These things are the more necessary as the Germans are quite ignorant of the necessary conduct in a sea voyage, and are naturally very dirty. I shall be glad to serve you [if you] send any more this way, but it will be quite necessary for you to direct what you would have returnes for [*sic*] when money is not to be had. You know the staple of the country is tobacco, besides which wheat, bread, flour and lumber may be had as cheap as in Philadelphia and often cheaper, as they have vast quantities of wheat from this province which as I have often been assured is much better than any they have of their own growth.”<sup>18</sup> The Germans, he adds, shall receive protection.

The last years of Dulany’s life were spent in a period of transition. On the economic side we have seen the agitation and passage of the inspection law, with its excellent results; the importation of the Germans and the development of a general agriculture. Were we to examine further we should find other developments of equal interest, for example, the increase in the settlements away from the tidewater region led to the development of more extended and better constructed highways, a process which reached its highest point many years later, in the building of the National Road. Coincident with this evolution is the growth of towns, especially of Baltimore, in a country where previously no town life of any importance has been known.<sup>19</sup> The interest long expressed with reference to the mineral resources of the colony also began to show more tangible results.

In politics, likewise, the old order of things was passing away and changes were in the air. In 1751 the old Pro-

<sup>18</sup> Letter to Messrs. D—— [illegible] & Co., Merchants in Rotterdam. Annapolis, Dec. 29, 1752.

<sup>19</sup> For these economic changes in general, see, besides Mereness, Maryland, Part I, Chap. IV; Lincoln, The Revolutionary Movement in Pennsylvania, Chapters II-IV. The special topics of the growth of the roads and the development of Baltimore are treated more fully by the present writer in Highway Legislation in Maryland and its Influence on the Economic Development of the State, and in the Chapter on Baltimore, in Historic Towns of the Southern States, ed. by Rev. L. P. Powell.

prietor, Charles, Fifth Lord Baltimore, died and was succeeded by Frederick the last but one of the Lords Proprietary, much given to travel, authorship and horse racing. In 1753 Ogle's long and somewhat broken regime came to an end and Horatio Sharpe became Governor.<sup>20</sup> The old question of the Pennsylvania boundary approached its final solution, and in its place arose the dispute with Lord Fairfax over the boundaries of the latter's grant, which bequeathed a long-standing territorial controversy to the governments of Virginia and Maryland.<sup>21</sup> The Ohio Company had already been formed, and soon came the clash between Frenchmen and Virginians which opened the long conflict of the French and Indian War. The part which Maryland played externally was limited by her internal dissensions, which resulted from the continuation of the attack of the Lower House against Proprietary prerogative.

After this war, to the grievances cherished against the Proprietors was added gradually disaffection towards the government of Great Britain, and in the Revolution King, Parliament, Church, and Proprietary, together lost their political authority over Maryland.

In the intervening period the official system of the colony, including even the Governor's Council, was in the hands of members of the Dulany family and their kindred. While his brother Walter held the Commissaryship, Daniel Dulany the younger was Secretary of the Province. How the latter opposed the Stamp Act in a weighty pamphlet, which Lord Chatham was glad to quote; how he nevertheless re-

<sup>20</sup> Dulany to Hanberry & Co. (Letter Book, Sept. 4, 1753), writes "Our Gov'r arriv'd the tenth of last month & is very well liked by those who have seen him which gives me hope his government will be agreeable as he really seems to be a good-natured man, of a frank, open temper and free from affectation, and far from being greedy."

<sup>21</sup> McMahon, Historical View, Chap. I, pp. 49-72. See also a very interesting newsletter from Dulany to Cecilius Calvert (Letter Book, Dec. 26, 1725), which refers extensively to both of their boundary questions. In the same letter is valuable reference to the Anti-Roman Catholic scare, which arose again with the rumors of war.

fused to follow the popular party into revolution, and with respect both to Proprietary and to Imperial politics remained a Tory; how he debated at length, with Charles Carroll of Carrollton, the legality of another proclamation like that of 1733—all this belongs to another period of Maryland history. But neither the questions then at issue nor the status of the landed office-holding aristocracy can be rendered truly intelligible without an account on the one hand of the economics and politics of the preceding epoch, and on the other of the man who founded the ruling family. To give such an account has been the endeavor of this paper.

# BEGINNINGS OF MARYLAND

1631-1639



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BEGINNINGS OF MARYLAND

1631-1639

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## CONTENTS

	PAGE
INTRODUCTION .....	7
CLAIBORNE AND HIS ENTERPRISE.....	9
OPPOSITION TO LORD BALTIMORE.....	13
THE LORD BALTIMORE'S FIRST EXPEDITION.....	15
BALTIMORE'S INSTRUCTIONS TO HIS COLONISTS.....	21
THE VOYAGE OF THE ARK AND THE DOVE.....	24
THE LANDING IN MARYLAND.....	29
CALVERT'S POTOMAC VOYAGE.....	31
THE FOUNDING OF ST. MARY'S.....	34
BEGINNINGS OF THE PROVINCIAL TRADE.....	40
KENT ISLAND SETTLEMENT.....	43
GROWTH AT KENT ISLAND.....	46
CLAIBORNE AND HIS PARTNERS.....	48
CALVERT AND CLAIBORNE.....	50
PETTY WARFARE.....	55
HARVEY'S OVERTHROW.....	58
THE COMING OF CAPT. EVELIN.....	61
GROWTH OF ST. MARY'S.....	65
THE GOVERNOR'S NEW COMMISSION.....	68
ATTEMPTS TO SUBDUE KENT ISLAND.....	71
THE NEW YEAR AND THE ASSEMBLY.....	74
THE CONQUEST OF KENT ISLAND.....	81
PROCEEDINGS AGAINST SMITH AND CLAIBORNE.....	85
CLAIBORNE'S PETITION IN ENGLAND.....	88
THE CLAIMS OF CORNWALLIS AND THE JESUITS.....	90
FATHER WHITE'S REPORT.....	96
EARLY COURT RECORDS.....	99
THE THIRD ASSEMBLY.....	103
THE FIRST PROVINCIAL LAWS.....	107



# BEGINNINGS OF MARYLAND

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## THE FIRST SETTLEMENTS AND THE ESTABLISHMENT OF THE CAPITAL AT ST. MARY'S

### INTRODUCTION

The twenty-fifth of March is the day on which the first colonists sent out by Lord Baltimore landed on the soil of Maryland. In 1903, that day was celebrated throughout the schools of the State as Maryland Day, and the establishment of that custom seems to make a restatement of the beginnings of the settlement of the Province, a task worthy of accomplishment. The attempt is here made to trace these beginnings, with the same minute care with which the citizens of Massachusetts have traced the beginnings of their Commonwealth. No one has attempted to do this in an elaborate fashion, since the publication of the Archives of Maryland has unlocked the treasures of our early records. A careful study of these printed records yields many new details, and additional facts of interest, with reference to the Kent Island Colony, are found in the manuscript records of the English Court of Admiralty.

Lady day in March is a fit time for the beginning of things. With the feast of the Annunciation, all mediæval Christendom began the new year, and tenants of land throughout England remembered it as the quarter-day, when rents were paid. No fitter day could be chosen than this as the natal day of that State which is Terra Mariæ. No other day was so well suited for the first settlement of

the province and no other name could have been given to the place of settlement than the name which was hers to whom the day was dedicated and hers from whom the province took its name. The pious men in the first company of settlers must have thought with pleasure on this coincidence of dates when they landed on the bank of the Potomac. Spring was at hand and with it bloomed Maryland into life.

The little band that began the provincial history of Maryland had sailed from England<sup>1</sup> on November 22, 1633. The reverend chronicler of the voyage, that "discreet" Jesuit, Father Andrew White, remembered that it was St. Cecilia's Day, and thus all Maryland's beginnings had the gracious patronage of woman. The narrative of Father White has reached us in various forms. Written shortly after the landing, in both English and Latin, the former was transmitted in at least two copies, one to Sir Thomas Lechford and one to Lord Baltimore. The copy sent Lechford<sup>2</sup> came into possession of the Maryland Historical Society in 1894 and has been published by them, while that sent Baltimore was used by him as a basis of a little pamphlet<sup>3</sup> spread abroad by him as an advertisement of his colony and known as "A Relation of the Successful Beginnings of the Lord Baltimore's Plantation in Maryland," 1634. The Latin narrative, sent to White's ecclesiastical superior, Mutius Vitellescī, or Vitelleschi, was preserved in the Jesuit archives, and was translated by N. C. Brooks for the Force's Tracts,<sup>4</sup> while the narrative itself, with a translation by J. Holmes Converse, was edited by Rev. E. A. Dalrymple and published by the Maryland Historical Society.<sup>5</sup>

<sup>1</sup> 35 Fund Pubs. 23, 26.

<sup>2</sup> 35 Fund Pubs., Calvert Papers, No. 3, ed. by C. C. Hall.

<sup>3</sup> Reprinted as Shea's Early Southern Tracts, I, 1865, as edited by Brantz Mayer.

<sup>4</sup> Vol. 4.

<sup>5</sup> 7 Fund Pubs. On p. 117 is a sketch of Father White's life.

## CLAIBORNE AND HIS ENTERPRISE

The charter of Maryland had been granted to Cecilius Calvert, second Lord Baltimore, on June 20, 1632, and he had at once taken measures to send an expedition to occupy his new province. The delay of fifteen months before the expedition started was due not alone to the necessary preparation for the voyage, but also to the opposition of the Virginians.<sup>6</sup> They claimed that their rights were infringed by Baltimore's charter and pointed out that, while the old Virginia company still existed, in 1623, an order in Council had assured the "Adventurers and Planters" that their estates should receive no prejudice, but should be fully and wholly conserved, all changes made being merely in the form of government. These pledges had been renewed several times, yet now they find a large tract of land contained in the limits of the company's charter given to another. As the adventurers in Virginia were, in a manner, tenants in common, their claim could not thus be wiped out and their estates preserved. Worst of all, the new charter gave Baltimore, a Roman Catholic, two-thirds of the Chesapeake Bay, or the "Bay of Virginia," and cut off the Virginians from the profitable Indian trade in the north. That trade had been carried on by them for twenty-five years, and they had issued commissions for men to exchange "truck" for furs from year to year. Among these traders had been William Claiborne, a younger son of a Westmoreland family,<sup>7</sup> who had come to America as

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He was born in London about 1579, ordained as a secular priest 1605, and became a Jesuit in 1609. He had taught candidates for the priesthood in Spain and at Douay and Liège. He acquired the Indian language, located himself at Mattaponi, prepared an Indian grammar and catechism. In 1644, he was seized by Claiborne's men and sent to England with Father Fisher, charged with violating the law as to missionary popish priests. He never returned to Maryland after his release but died under an assumed name in London on Dec. 27, 1656. Father Fisher returned to Virginia in 1648.

<sup>6</sup> Council, 5 Md. Arch. 175, 3 Arch. 19.

<sup>7</sup> Second son of Sir Edward Cleburne or Clayburne. Neill, Found-

surveyor of the Virginia Company in 1621, and gaining prosperity, had been made Secretary of State for the Province in 1625. In 1627 Governor Yeardley, of Virginia,<sup>8</sup> gave him authority to sail "with a sufficient companie of men in a shallop for discoverie of the bottom of the Bay of Chesepeck," to trade with Indians there and to govern his company on the voyage, save as to matters of life and death, according to the laws of the sea. A like commission<sup>9</sup> from Gov. John Pott in 1628 authorized him to trade with the Indians for six months. The success of these voyages was such that Claiborne, who had been made captain of forces against the Indians<sup>10</sup> in 1627 and in 1629,<sup>10a</sup> associated himself with a firm of London merchants, known as Cloberry & Co., or Cloberry & Murehead, who were to advance capital for the business. In the course of his trafficking, Claiborne had been pleased with what Capt. John Smith called Winston's Island. On this island he proposed to establish a plantation, and for that purpose a commission was obtained on May 16, 1631, from Charles I, signed by Sir William Alexander, Secretary of State for Scotland,<sup>11</sup> authorizing him and his associates to trade "for corne, furres or any other comodities in all parts of New England and Nova Scotia, where there is not already a patent granted to others for sole trade," and directing the officers in Virginia to permit him and his companions to trade in "all the aforesaid parts" without any hindrance. Why this grant was obtained under the Scotch crown is unknown. Possibly Clo-

ers of Md. 38. Neill thought the English home might be the reason of the name of Westmoreland Co., Va. Claiborne returned to Virginia in 1640 and closed his life at West Point. The date of his death is unknown.

<sup>8</sup> Coun., 5 Arch. 158.

<sup>9</sup> Coun., 5 Arch. 160.

<sup>10</sup> Neill, *Founders of Md.* 39.

<sup>10a</sup> Coun., 5 Arch. 161. In that year he signed as councillor the statement against George, Lord Baltimore.

<sup>11</sup> Coun., 5 Arch. 162; 3 Arch. 19.

berry & Company had friendly relations with Alexander, for it seems that the firm obtained the grant.<sup>12</sup>

It will be noticed that this is neither a patent for land, nor a grant of trade in Virginia, nor a grant of jurisdiction, which defects caused Claiborne much trouble later. Coming up the Chesapeake with this commission, he "planted" his chosen island, calling it the Isle of Kent, and soon afterwards bought the land from the Indians, about one hundred of whom he found there.

It is not quite clear who took the initiative in forming the partnership between Cloberry & Co. and Claiborne. After the latter's return to England, in 1637,<sup>13</sup> a suit was brought against him by Cloberry & Co.<sup>13a</sup> for an accounting, and from the affidavits then made, we learn that both parties had visions of a very profitable trade with the Indians in the Chesapeake and Delaware Bays, the Hudson River, New England, and Nova Scotia. William Cloberry had "adventured" to Canada with Kirk and so did not enter into the plan ignorantly. He took two-sixths of the joint stock and the other sixths were taken by John Delabarr, Maurice Thompson, Simon Turgis and William Claiborne. It was later claimed by Claiborne that the venture, on account of his offices in Virginia, was but for one voyage, but it seems more probable that it was intended to be a permanent connection. It was at his instance that the Scotch commission was obtained, as he claimed he could not go without hindrance from the Governor of Virginia,<sup>14</sup> unless he had especial royal license. Though not satisfied with this license, Claiborne was induced to rely on it

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<sup>12</sup> New England's southern boundary was 40 degrees, considerably north of Kent Island.

<sup>13</sup> Coun., 3 Arch. 32.

<sup>13a</sup> Much of the information as to the early history of Kent Island Plantation comes from the unpublished records of the London Court of Admiralty, transcripts of which are possessed by the Md. Hist. Soc. Martin c. Claiborne, 1638. Cloberry c. Claiborne, 1638-1640. Claiborne c. Calvert, 1643. Smith c. Cloberry, 1645.

<sup>14</sup> Had relations between him and Harvey already become strained?

for the present and not stop the voyage. Afterwards he asserted that Cloberry & Co. promised to obtain a patent of land, shortly, through their friends at court. Their failure so to do was one of his great causes of complaint.

The partners<sup>15</sup> fitted out the Africa, John Watlington, master, carrying a cargo valued at £1318.19.8 and 17 indentured servants, and paid the owners of the vessel £700 for freight and wages of the seamen. They alleged later that Claiborne only paid for his sixth of the cargo and promised to allow interest for the other advances at the Virginia rate, 25 to 30 per cent. Several passengers for Virginia were also on board and the ship left England on May 28, 1631.<sup>16</sup> On July 20 they reached Kecoughtan, where they established a storehouse, in which supplies and peltries could be kept until the sailing of the ships from that point to England. They also provided themselves with nineteen sows and a boar,<sup>17</sup> hens and a cock, ducks, a wherry, and other needful supplies for the plantation. After a short stay in Hampton Roads, the expedition sailed up the bay and reached the island. The settlement of Kent Island was made on August 17, 1631, almost a year before the charter of Maryland was granted to Baltimore, with the right of jurisdiction over territory "hitherto unplanted." Thus Claiborne is seen to have some ground for his case, though himself without a grant of jurisdiction, if this famous clause in the charter was understood as one of limitation and not description. Claiborne did not spend all his time on Kent Island, though he had a private plantation there called Craford,<sup>18</sup> but con-

<sup>15</sup> Thompson came on the Africa at Deal and made inventory of the joint stock.

<sup>16</sup> Many of these dates come from Claiborne's itemized account appended to his answer to Cloberry and Co., Nov. 11, 1639. Admly. Recs. Libel 100, No. 63.

<sup>17</sup> A boar from Popley's or Poplar Island was bought on Sept. 3, 1632.

<sup>18</sup> Coun., 5 Arch., Davis Day Star 44: Claiborne's settlement was at Kent Point, near by were the mill and fort. Baltimore gave the manor to Leonard Calvert for his services in the con-

tinued to possess his Virginia residence at Hampton or Kecoughtan, and to sit in the Virginia council. On March 8, 1631-2 after Kent Island was planted,<sup>19</sup> Claiborne showed his adventurous nature by securing from Governor Harvey, of Virginia, a license to trade unto the adjoining plantations of the Dutch or unto any English plantations. The chief advantage of his Scotch commission seems to have been that it was unlimited as to time.<sup>20</sup> Kent Island was so thoroughly regarded as a part of Virginia before ever the name of Maryland was heard of, that in the House of Burgesses sat in 1631-2 Capt. Nicholas Martin as delegate from Chisquack in the Northern Neck and Kent Island.

#### OPPOSITION TO LORD BALTIMORE

When word of the Maryland charter came to Virginia, the planters there prepared a petition to the King of England,<sup>21</sup> which was referred on May 12, 1633, to the Lords Commissioners for foreign plantation. On June 4 they summoned all parties to come before them on June 28, and, after hearing the cause, postponed decision until July 3, in hopes that the controversy might be accommodated in friendly manner. As these hopes failed, the decision was made that they would leave the Lord Baltimore to his patent and the other party to the course of law, according to their desire. "To prevent further difficulty the Commissioners directed that the Planters on either side shall have free traffique and commerce with each other

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quest of the island and the latter assigned it to Capt. Giles Brent on Sept. 7, 1640, in whose family it remained for some generations. Crawford stood near Craney Creek, now a pond, and is frequently mentioned in old land records. The Matapeake Indians lived at one time near Indian Spring, at another in Matapeax Neck. 2 Bozman 97 suggests that the Fort was probably situated on the first navigable creek lying on the left hand in ascending the Eastern Bay after passing Kent Point. The local tradition agrees with this and bits of glazed bricks can be picked up on the supposed site.

<sup>19</sup> Coun., 5 Arch. 163.

<sup>20</sup> It also gave him clear right to trade outside of Virginia.

<sup>21</sup> Coun., 3 Arch. 21.

and that neither part shall receive any fugitive persons belonging to the other, nor doe any Act which may drawe a warre from the Natives upon either of them; and, lastly, that they shall sincerely enterteine good correspondence and assist each other on all occasions, in such manner as becometh fellow subjects and members of the same State." This was a practical victory for Baltimore, though Claiborne claimed that he won,<sup>22</sup> since the Isle of Kent was cultivated and hence was not included in the "Patent" to which Baltimore's rights were referred.

At this time the King wrote to the Virginia Governor and Council, courteously acknowledging their petition, stating that he wished a mutual correspondence between Baltimore and them,<sup>23</sup> and directing them and "the rest of the Old Planters" to use Baltimore, who planned to head the expedition, "with that courtesie and respect that belong to a person of his rank and qualitie and departed from hence in our very good grace and favor." They should suffer his servants and planters to buy and transport "such Cattell and other commodities to their Colony, as you may conveniently spare at reasonable rates." In general, they must give "such lawfull assistance as may conduce to both your safeties and the advancement of the plantation of those Countries." On July 31, the Privy Council directed all officers to forbear to take or press any persons belonging to the Ark, either on the voyage to Maryland or on her return, and that she be allowed "to pass and return without any let or hindrance."<sup>23a</sup>

Armed with such credentials as these, it might be thought that the future course of the Lord Proprietary would have been an easy one, and such might have been the case had Calvert's enemy less pertinacity or dogged persistence than Claiborne. But with that man the overthrow of Baltimore became a fixed and permanent idea.

<sup>22</sup> Coun., 3 Arch. 32.

<sup>23</sup> Coun., 3 Arch. 22.

<sup>23a</sup> Neill, *Founders of Md.* 60.

Year after year, under king, commonwealth, or protector, he battled to destroy the power of the Maryland charter. So struggling, he outlived his adversary, and his last fruitless petition was dated forty-five years<sup>24</sup> from the settlement of Kent Island and was made to Charles II by "Col. William Claiborne, a poor old servant of your Majesty's father and grandfather." Assuredly, Claiborne was the "evil genius" of the proprietor, if not of the province.

#### THE LORD BALTIMORE'S FIRST EXPEDITION

The summer and autumn of 1633 passed with busy preparations made by Baltimore for his new plantation.<sup>24a</sup> Finding that his presence in England was required,<sup>25</sup> reluctantly he gave up the leadership of the expedition, trusting "by the Grace of God" to be in Maryland in the fol-

<sup>24</sup> Coun., 5 Arch. 158, March 13, 1676-7. See McMahon's Md.

<sup>24a</sup> Johnson's Foundation of Md., 18 Fund Pubs. 24, prints from Stonyhurst Anglia, Vol. IV, a paper entitled "Objections answered touching Maryland," which was prepared by Richard Blount, Provincial of the Jesuits, for Baltimore's guidance. It maintains that the English laws against Roman Catholics were made for "reason of State; for the safety of the king and kingdom more than religion, was the cause and end of those laws," that it is better to let Roman Catholics go to Maryland than to allow the country to remain in possession of heathen, and that Romanists have already been permitted to go to France, a country to which the king's title is even better than to Maryland. The paper goes on to answer objections; that the king's revenue will be impaired by loss of the benefit it receives from the estate of English recusants, that the settlement of Roman Catholics in Maryland would much prejudice England by drawing considerable number of people and transporting wealth thence, that a settlement of Roman Catholics would be dangerous to the Protestants in Virginia and New England. Better English Romanists than Dutch or Swedes, said the provincial, and no emigrants to Maryland, as long as they may live peaceably under their own government without oppression, either in spirituals or temporals, will desire to bring in any foreigners to domineer over them, which misery they would undoubtedly fall into, if any considerable foreign prince or State had the possession of the English colonies in Virginia or New England. The paper shows the care with which Baltimore armed himself against interruption in his plans.

<sup>25</sup> 28 Fund Pubs. 134.

lowing year. His presence in England was ever necessary to guard his charter privileges in the troubled years that followed, and the first Lord Proprietary of Maryland never saw his distant province. To replace himself at the head of the party, he put his brother Leonard, then about twenty-eight years old, and with him sent a younger brother George. The lieutenant-governorship of Maryland, thus conferred upon Leonard Calvert, remained in his possession, except when he was thrust out by revolution, until his death a dozen years later. He seems to have been a tolerant, cool, conscientious man, faithful to his brother's interest, possessed of some executive ability, but with the fatal lack of personal magnetism, of the power to attach men to himself, or of the ability to judge who would be faithful to him, which was so detrimental to the Calverts and so characteristic of the family. Of his private life, we know but little, though he was certainly married. Of George Calvert <sup>22a</sup> we know almost nothing, and he was not one of the governing board of the expedition, probably because of his youth. Jerome Hawley, <sup>22b</sup> a

<sup>22a</sup> He is said to have removed to Virginia, and died there. Gov. Leonard Calvert left two children. (1) Col. William Calvert, mem. of the council of Md., 1669-1682. Drowned in 1682. He married Elizabeth daughter of Gov. W<sup>m</sup> Stone and left issue, which is extinct in the male line. (2). Anne Calvert, who married 1<sup>o</sup> Baker Brooke (d. 1697), 2<sup>o</sup> Henry Brent (d. 1693), 3<sup>o</sup> Richard Marsham (d. 1713). She had issue only by her first marriage. Gov. Leonard Calvert's widow was living in Maryland in 1673 (Calvert papers, i, 297). [Dr. C. Johnston furnished these facts.]

<sup>22b</sup> Jerome Hawley (Neill, *Founders* 83; Streeter, 9 Fund Pubs. 108), son of James, of Brentford near London, is first heard of in 1615 where he seems to have had some connection with the trial of the Countess of Somerset for conspiring to poison Sir Thomas Overbury. He was later a sewer or superintendent of the queen's banquets. On Nov. 20, 1633, he made a will in England. He came to Maryland with his wife Eleanor, but returned to England in 1635, to defend Cornwallis's action in the conflict with Lt. Warren. There he remained over two years, conferred with the king on the tobacco trade and, early in 1637, was made treasurer of Virginia and appointed to receive the quit-rents in that province. He does not seem to have given up his connection with Maryland, nor his position as councillor, after his return to America, but sat in the Md. Assembly on Feb. 8, 1637-8, and signed the proclamation of Gover-

brother to the governor of Barbadoes, and Thomas Cornwallis<sup>\*\*c</sup> were appointed commissioners and associated

nor Calvert on Feb. 12 against the Kent Islanders. He had returned to Jamestown by the middle of March and on May 8 wrote to Sir Francis Windebank, complaining that Gov. Harvey had not restrained the Swedish vessels, the "Key of Calmar" and "Griffin," sent to establish a colony of that nation on the Delaware, though the vessels had refitted for 10 days at Jamestown. He states that he has "discerned some underhand oppositions made" against him and asks a warrant for fees and power to appoint deputies to view tobacco. About this time, Richard Kemp, Secretary of Va., bitterly complained against Hawley's commission in a letter to Baltimore (28 Fund Pubs. 152), stating that Hawley would rob both the governor and secretary of their remuneration. Before any result could come, Hawley died in July, 1638. Streeter suggests that the item for surgeon's bills in the administration account may point to some accidental injury. Administration was given Cornwallis (4 Md. Arch. Prov. Ct. 101) and inventory rendered Apr. 20, 1639. Jerome Hawley had among his brothers: Henry, the governor of Barbadoes; William, who acted as his deputy, in 1638 removed to Maryland and signed the Protestant Declaration in 1650; and James of Brentford. (Brown's *Genesis of the U. S.* 911). The last wrote to William, July 30, 1649 (4 Md. Arch. Prov. Ct. 503-505; Neill, *Founders* 85), sending proof that Jerome was indebted to him, authorizing William to collect the debt, and stating that Cornwallis seized on the estate, "pretending that he was indebted unto him, but I am informed it was only doubtful pretence to defraud me." He speaks of Jerome as having left but one daughter, who is in Brabant.

<sup>\*\*c</sup> Thomas Cornwaleys or Cornwallis was as distinctly the military leader of Maryland, as Miles Standish was of Plymouth. He alone was known as "the captain" and so well off in this world's goods was he that in 1641 he paid one-fourth of the tax levied on St. Mary's County. (See 18 Fund Pubs. 176, Streeter's papers relating to Early History of Md., 9 Fund Pubs. 124; Neill's *Founders* 69; Neill's *Eng. Colonization* 251.) He was second son of Sir William Cornwallis grandson of Sir Charles, ambassador to Spain, and great-grandson of Sir Thomas, comptroller of the household of Queen Mary. He was born in 1603, and died in 1676 at Burnham Thorpe, Norfolk Co., England, where his residence is said to have been called Maryland Point, from his experience in the province. Neill wrongly thinks he was a Protestant (28 Fund Pubs. 172 proves him to be a Roman Catholic). Streeter describes him as "one of those individuals, whose presence is desirable in any community, but all important in a colonial enterprise, who self-confident, cool in the hour of danger, firm, frank and determined, make their mark in a community and become, without special effort on their own part, formers of public opinion and centers to which all eyes turn, in cases of emergency & doubt." In 1640, he finished a substantial brick house, the best in the colony, and visited England, probably on business concerning the settling of Jerome Hawley's estate. His first wife had been attending to his affairs in England in 1638 (28 Fund Pubs. 170). In Dec., 1641, he returned, in a ship com-

with Leonard Calvert as the nucleus of the Council.<sup>25</sup> Cornwallis became a prominent inhabitant of the province. Hawley became later treasurer of Virginia, and died in 1638.

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manded by Ingle, and soon had 4000 acres of land laid out for him on Potomac River "upward of Port Tobacco Creek." His manor, Cornwalley's Cross, was plundered by Ingle in Feb., 1645, and much valuable plate and furniture taken. Cornwallis had sailed for England, in April, 1644, and remained there until 1652, when he returned to Maryland to demand compensation for injuries done his property during Ingle's revolution. He then filed a list of servants brought into the province by him, to secure the amount of land due him. From this list, we learn that he brought in 12 in the Ark and received 5 more from the death of his partner, J: Saunders (vide 4 Md. Arch. Prov. Ct. 14). In 1634, he brought in 4 from Virginia, one of whom was Cuthbert Fenwick; in 1635, he brought in 9, one of whom was Zachary Mottershead. Five more in 1636, 5 in 1637, 9 in 1639, 5 in 1640, 12 in 1641, 1 in 1646 and 7 in 1651, make a total of 77 persons whom Cornwallis brought to Maryland within 20 years. (Five names may be in the 17 in the Ark or may be additional ones. In that case the number would be 82). Rightly could he say that: "It is well known he hath, at his great cost & charges, from the first planting of this Province, for the space of 28 years, been one of the greatest propagators & increasers thereof, by the yearly transportation of servants, whereof divers have been of very good rank & quality, towards whom & the rest he hath always been so careful to discharge a good conscience in the true performance of his promise & obligations, that he was never taxed with any breach thereof, though it is well known & he doth truly aver it, that the charge of so great a family as he hath always maintained was never defrayed by their labor." (Md. Arch. Ass. 463, Petition of Cornwallis Sept., 1663.) On his return to Maryland, he continued to have bricks delivered him in each of the next two years and was probably planning a house on the Potomac above Potopaco. In 1654, he again visited England and there married, probably in 1657. He came to Maryland with his young wife early in 1658 and took up 1000 acres of land in Kent County (9 Fund Pubs. 203) on Aug. 16, calling the tract Cornwallis's Choice. On June 2, 1659, he sailed for England, leaving his ample estate in the care of Mr. Richard Hotchkeys and, except for a possible brief visit in the next few years, no longer saw the province in whose early history he played so important a part. He well styled himself "one of the first and chief adventurers for the planting & inhabiting" the province. (Private correspondence of Jane, Lady Cornwallis 1613-1634, p. xxxix, London, 1842).

He had nine children: William, John, Thomas, b. Apr. 19, 1662, d. July 1731, Rector of Erwarton, Mary, Penelope, Penelope, Katherine, Penelope, Mary. His will was made Jan. 12, 1675 and proved March 4, 1676. His second wife Penelope Wiseman, daughter of John of Tyrrell's Essex was his executrix and died at Erwarton, Nov. 7, 1693, aged 57. (Brown's Genesis of the U. S. 863.)

<sup>26</sup> Relation of 1635, 65. This work is a second and enlarged edition of the Relation of 1634.

The son of Sir Thomas Gerard,<sup>27</sup> two sons of the Lady Anne Wintour, the son of Sir Thomas Wiseman, and nine other gentlemen are named as being in the expedition. Some of the lesser emigrants were lodged by Gabriel Hawley, Baltimore's deputy, with certain inn-keepers, while the vessels were preparing to sail, and a suit for their entertainment was brought<sup>28</sup> when the voyage was about to begin and may have been one cause of Lord Baltimore's detention in England. He wrote that there were about three hundred laboring<sup>29</sup> men and handicraftsmen in the vessel. We have no exact information concerning the religion of the party. It is certain that most of the gentlemen were Roman Catholics and that many of the yeomen and servants were Protestants.<sup>29a</sup>

The enemies of the expedition were vigilant. Rumors were carried to the Privy Council that Baltimore "intended to carry over nuns into Spain and soldiers to serve that king," and, when the Council laughed at these stories, the Attorney-General was induced to "make an information in the Star Chamber" that the vessels had gone without proper custom house papers and "in contempt of all authority," the emigrants "abusing the king's officers and refusing to take the oath of allegiance." On October 19, after the ship had already dropped down the Thames to Gravesend,<sup>30</sup> a command was sent, post haste, to the ad-

<sup>27</sup> Richard Gerard, who went back to England in about a year, Edward and Frederick Wintour, Henry Wiseman. Relation of 1635, 65. Frederick Wintour died before 1638, and Edward shortly after him. Neill, *Founders of Md.* 49, 64; Brown, *Genesis of the U. S.* 1056.

<sup>28</sup> Coun., 3 Arch. 24.

<sup>29</sup> Browne, *Md.* 21; Neill, *Founders of Md.* 63. (Letter to Earl of Strafford.)

<sup>29a</sup> Johnson (18 Fund Pubs. 32) thinks that all the Catholics must have embarked at the Isle of Wight, points out that more than half (128 out of 200) took the oaths, and cites Father Henry More, who wrote a memorial from England to Rome in 1642, for support of the position that "by far the greater part were heretics." He also quotes a letter from Father White, dated 1641, stating that "3 parts of the people in 4 are heretics."

<sup>30</sup> Coun., 3 Arch. 23.

miral "guarding the narrow seas," to "stop the Ark, of London, Richard Low, master, Captain Winter being on board with a company of men for Lord Baltimore's new plantation in or about New England."<sup>30a</sup> The Ark was a vessel of 350 tons and a crew of about 40 men and had already carried the first Lord Baltimore's colonists<sup>31</sup> to Avalon. With it was sent a pinnace, the Dove, of about 40 tons. It is probable that both vessels were Calvert's property, and a deed<sup>32</sup> is extant, dated October 15, transferring one-eighth of the Dove from Cecilius to his brother Leonard. Cecilius is usually said to have expended £40,000 in equipping the expedition, but the colonists also provided for some of the expenses, and an agreement between Leonard Calvert and Sir Richard Lechford, dated October 7, 1633, shows that the two men had adventured the sum of £401.13.8 upon a voyage to be made into the province of Maryland. Of this amount, part or all of which was expended in providing "truckling stuff to be exchanged with the Indians for furs," Lechford furnished one-fourth and was to receive the same proportions of the profits, with a full account of the expenditures of the whole.<sup>33</sup>

The "London Searcher" caught the Ark and Dove and brought them back to Tillbury Hope, near Gravesend; there on October 29 gave the oath of allegiance to every one on board, in number about 128. No one refused it, and the master said that the only other persons who had planned to make the voyage were some few who had "forsaken the ship" and given up the plan, because of the

<sup>30a</sup> Neill, *Founders of Md.* 60.

<sup>31</sup> Neill, *Founders of Md.* 59. Browne, *Md.* 21.

<sup>32</sup> 35 Fund Pubs. 15.

<sup>33</sup> 35 Fund Pubs. 13. Calvert executed a bond on Oct. 19, 1633, to pay Lechford £50, if he did not sail from England by Christmas Day. Hindrance by command of court was no exemption from the penalty, which shows that Lechford feared some such interference. 35 Fund Pubs. 17. The oath of allegiance may be found in Neill's *Founders of Md.* 86; vide also p. 61-63.

delays. This report made it easy for Calvert to convince the Council that the Attorney-General was "abused and misinformed," and the ships were restored to "their former liberty."

#### BALTIMORE'S INSTRUCTIONS TO HIS COLONISTS

To this expedition, "well provided with all things," Calvert gave instructions, dated November 15, which show his wise and tolerant mind. A shrewd, far-seeing man, who, while devout in his religious life, was neither bigoted in faith nor subservient to his ecclesiastical teachers, Cecilius Calvert was well suited to be the Roman Catholic Lord Proprietary of a Palatinate, under a king whose realm recognized another church as its established faith. It was clearly impossible for him to establish his own church as the official religion of the province, and he wished to establish none other. While he was tolerant in disposition, his self-interest also pointed him to what was the only safe direction for his province's development. If he wished to retain his charter, to gain the financial profit which he hoped from Maryland, to make it an asylum for his co-religionists from the harshness of English laws, and to draw thither the greatest number of emigrants, it was clearly desirable that there should be no union of the civil and the ecclesiastical authority in Maryland and that religious liberty should prevail there from the foundation.

This cautious prudence led Baltimore to instruct the Governor and Commissioners,<sup>34</sup> first of all, that they "preserve unity and peace amongst all the passengers on Shipboard and that they suffer no scandal nor offence to be given to any of the Protestants, whereby any just complaint may hereafter be made by them in Virginia or in England." The Protestants must be treated "with as

<sup>34</sup> 28 Fund Pubs. 132. The original draft of this in Cecil Calvert's own handwriting, with his own corrections and interlineations is in the possession of the Md. Hist. Soc. J: Saunders, Cornwallis's partner, owned  $\frac{1}{8}$  of the Dove. 4 Md. Arch. Prov. Ct. 14.

much mildness and favor as justice will permit," all acts of Roman Catholic religion must be "done as privately as may be," and the Roman Catholics are cautioned to be silent upon all occasions of discourse concerning matters of religion. "These rules are to be observed on land as well as at sea."

It was feared that the Proprietary's enemies had "seduced and corrupted the mariners" and perhaps others of the company, so diligent inquiry should be made to see if information could be found "concerning the private plots of his Lordships adversaries in England." Any facts so ascertained, either on the voyage or after the arrival in Virginia, should be sent in writing to Baltimore, by "a trusty messenger in the next ships that return for England."

On arriving at Virginia, the colonists are to "avoid any occasion of difference with the settlers there," and to have "as little to do with them as they can this first year." Indeed, they must "connive and suffer little injuries from them, rather than to engage themselves in a public quarrel with them, which may disturbance the business much in England, in the infancy of it." So much was the hostility of the Virginians dreaded by Lord Baltimore, that he directed the colonists, on no account, to go to Jamestown, or to come within the command of the fort at Point Comfort, unless they should be "forced unto it by some extremity of weather (which God forbid), for the preservation of their lives and goods and that they find it otherwise impossible to preserve themselves." Rather they should anchor near Accomac, where there was no fort, and there try to find guides to the "Chesapeake" Bay and the "Pattawomeck River," so as to discover a fit place in the new province to "set down on." In searching for this place, they must consider first, that it is "probable to be healthful and fruitful," next, that it may be easily fortified, and thirdly, that it may be convenient for trade, both with the English and savages.

While searching for this site, they were directed to send a trustworthy messenger, who should be a member of the Church of England, to carry the royal instructions to the Governor and Council of Virginia, as well as Baltimore's personal letter to Sir John Harvey. The messenger should also notify Harvey of the arrival of the expedition, tell him from Baltimore that he regrets the necessity of postponing his arrival in Maryland for a year, desires to hold a "good correspondency" both with Harvey and Virginia, and assures Harvey of his particular affection for him, arising from the reports of his worth, his friendship with George, Lord Baltimore, and the kind letters Harvey has sent the Proprietary, since he heard of Baltimore's intention to become his neighbor. A butt of sack is to accompany these good wishes.

With respect to Claiborne, Baltimore's policy was shrewd and peaceable. As soon as convenient, a Church of England man is to take him a letter, notifying him of the arrival of the colonists, and of the authority over the province committed to Leonard Calvert, Hawley, and Cornwallis, and inviting him, kindly, to come to them and speak with them on business of importance. If he come, writes Cecil, "use him courteously and well," and tell him that Baltimore is "willing to give him all the encouragement he can to proceed" in the Plantation he "hath settled within the precincts of his Lordship's Patent." Cloberry & Co.<sup>35</sup> have already approached the Proprietary and asked for a grant of Kent Island, but Baltimore has heard that there are "some differences" between Claiborne and them and refused to act until he could understand from Claiborne himself how matters stand between them and what he would desire of his Lordship in that plantation, which was "first begun and so far advanced" by Claiborne's care and industry, and partially

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<sup>35</sup> The company included four or more men. 28 Fund Pubs. 135.

at his charges. Claiborne must be assured that Baltimore wishes to do justice to every one and is confident that Claiborne will conform himself to the Maryland charter, the duplicate of which and Leonard Calvert's commission should be shown him, if he desire this. While Cecil Calvert is thus conciliatory, he is not weak, and grimly adds, if Claiborne refuse to come, "let him alone for the first year," until the Proprietary can give further instructions; meanwhile they should inform themselves, as well as they can, of his plantation and what his designs are, strength he has and what correspondency he keeps with Virginia. They shall also learn the "present state of Virginia," informing Baltimore what trades they drive there, who are chief and richest men, whether their clamors against the Maryland charter increase or diminish, and whether these clamors proceed from any other reason than "spleen and malice." We shall discuss later other instructions as to the planters' conduct in the province.

#### THE VOYAGE OF THE ARK AND THE DOVE

After leaving Gravesend,<sup>36</sup> where they seem to have been detained for several weeks, the Ark and the Dove stopped at the Isle of Wight and took on board two Jesuit priests, Fathers Andrew White and John Altham (alias Gravener), and possibly others, whose scruples had prevented them from taking the oath of allegiance, or who had added themselves to the party in the last days of the delay in England. At last they were free, and set sail from Cowes about ten in the morning of Friday,<sup>37</sup> November 22, "with a gentle Northern gale." The vessels headed westward towards the Needles, but the wind died down so that they had to anchor at Yarmouth. They were

<sup>36</sup> 35 Fund Pub. 26.

<sup>37</sup> Evidently there was no superstitious fear of the ill luck supposed by some to follow enterprises begun on Friday.

not yet safe away and it was "secretly reported" by some of the seamen that letters were expected from the Privy Council to stop the expedition.<sup>38</sup> A strong wind, however, sprang up during the night, and driving a French bark from her anchorage, foul upon the pinnace, forced her to set sail and take to sea with the loss of an anchor. The ship, which had almost run aground by dragging its anchor in the strong wind and tide, followed, lest the vessels should part company, and on Saturday morning they passed the "dangerous Needles," it being the day of St. Clement, who suffered martyrdom by being cast into the sea, fastened to an anchor. By Sunday morning, the wind had served the company so well that they had passed the western cape of England. The Ark sailed slowly, lest the pinnace be left behind and fall a prey to Turks or other pirates, so that she could not race more than an hour with the Dragon, "a fair ship of London," of 600 tons, which overtook them during the day and gave them "great recreation" in the contest for speed. Monday night, November 25, a storm arose with a northwest wind and the pinnace, "mustering her strength, came up to us," writes Father White, who was in the Ark, "to tell us that if she were in distress, she would show two lights in her shroud." As the storm increased, the Dragon put back to Falmouth, and, about midnight, the pinnace showed the two lights and then disappeared. For six weeks the party in the Ark thought she had "assuredly been lost and foundered in those huge seas." The Dove had not been lost, however, but had put back to the Scilly Isles and later came in company with the Dragon and, under that "convenient guard," met the Ark at Barbadoes. As the day of the storm was consecrated to St.

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<sup>38</sup> A petition had just been sent to the Council by "Sir John Wolstenholme and other planters with Capt. Wm. Claiborne in Va." acknowledging that Kent Island was within the limits of Baltimore's patent, and asking that the island be not taken from them, but that they enjoy it with freedom of trade.

Katherine of Alexandria, the deliverance was doubtless attributed to her influence, and in her honor an island in the Potomac River was later named. Captain Lowe, of the Ark, a "sufficient seaman," having a ship "as strong as could be made of oak and iron," and one that made "fair weather in great storms,"<sup>39</sup> desired to try the goodness of the ship, on which he was making his first trip, and resolved to keep the sea, sailing close up to the wind with great risk of falling upon the Irish shore, so infamous for rocks of greatest danger. After that "frightful" night, the wind changed to the southwest, so that with many tacks the Ark scarce crept on her way until Friday night, November 29. Then there "poured forth such a sea of winds, as if they would have blown our ship under water at every blast." On Saturday, the clouds were so fearful and that, "ere it began to blow, it seemed all the sprites and witches of Maryland were now set in battle array against us," and the sunfish was seen to swim against the sun's course, a sure presage of storm. That night a "furious wind," following a heavy shower, tore the mainsail in half, before it could be furled, and the sailors themselves said they had seen ships cast away in less violence of weather. The devout men fell to prayers, confession and vows to the Virgin Mary, St. Ignatius, the patron saint of Maryland, St. Michael, and all the guardian angels. The captain bound up the helm, and "without sail or government" the ship floated like a dish, till God were pleased to take pity upon her. All night long they were in fear of imminent death, "and never looked to see day in the world," but the storm passed and good Father White felt assured, by this deliverance, of God's mercy towards them and "of those infidels' conversion in Maryland."

In these days of ocean steamships, it is difficult for us to imagine the discomforts of those long early sailing

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<sup>39</sup> Father White means that she rode smoothly.

voyages. The Ark was at sea only seven weeks and two days, which was "held a speedy passage," but the whole voyage took a little over three months, owing to the stops in the West Indies. Direct sailing across the ocean was almost unknown then and the West Indies were the half-way house from Europe to America. During the three months' after the storm, the Ark "had not one hour of bad weather, but so propitious a navigation as our marines never saw so sweet a passage." In general, the company was well during the voyage, and until Christmas only suffered from seasickness. The celebration of that day included giving wine to all on shipboard, which "was so immoderately taken as the next day 30 sickened of fevers, whereof about a dozen died afterward."<sup>40</sup> Sailing southward with "winds nor good nor very bad," watching for Turkish pirates but seeing none, though they once mistook three merchantmen sailing to the Canaries for such, Leonard Calvert began to be solicitous for freight homeward, fearing lest they should come to Virginia too late for a cargo and that the "Virginians would stand but our heavy friends." So he thought of sailing to Bona Vista, one of the Cape Verde Islands of Africa. Before they had gone far, however, Hawley and Cornwallis, seeing that the profit of this excursion "redounded to Lord Baltimore," and that their "land provision" would likely be "spent in the circuit," induced Calvert to ask the purser how much bread was aboard. Finding supplies were running short, the Ark's course was directed to the Barbadoes, "the granary of all the Charybbes Isles." They were afraid to await their arrival in Maryland to obtain such supplies, since they expected little from the Virginians but blows, and that Governor Harvey "would do us little good, being overawed by his council," while

<sup>40</sup> Amongst those who died was Mr. Nicholas Fairfax, a "Catholic venturer," and a "very faithful servant of my Lord," Mr. James Barefoot.

the savages would probably be found "as our English ill-wishers would make them." At Barbadoes, where Mr. Hawley's brother was governor and his brother-in-law, Mr. Acers, was deputy, the Ark arrived on January 3. Unhappily, the governor and council formed a combination against the voyagers and raised the price of everything, so that "it cost us our eyes," as Father White said. At Barbadoes, they were told they escaped the Spanish fleet by not going to Bona Vista, and that a conspiracy on the part of the slaves to revolt, seize the first vessel that came and then put to sea in her, had just been discovered. Thus the Ark had escaped two dangers. At Barbadoes, the Ark remained until January 24, during which time the Dove came into the harbor. By this delay, the Ark avoided the Spanish fleet, which made an attack on St. Christopher's, and Father White felt that God, to whom the spiritual good of Maryland was dear, had preserved them from danger.

The narrative of the voyage is filled with accounts of the strange fish, birds and fruits which the voyagers saw, and of the legends of the islands at which they tarried. Sailing from one island to another, on January 29, they arrived at St. Christopher's and stayed ten days there, taking in water and supplies, and finally they arrived in Virginia on February 24. Disobeying their instructions, they anchored at Point Comfort, "under command of the Castle."<sup>40a</sup> There they remained eight or nine days, to land some passengers and deliver the letters to Sir John Harvey, "not without imminent danger," as Father White thought. Governor Harvey showed the expedition the best usage the place afforded, and promised to furnish them "with all manner of provisions, cattle, hogs, corn, poultry, and fruit trees, as well as bricks and tiles for the Lord Proprietary's seat, though much against his council's will." White thought that Harvey did this in the

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<sup>40a</sup> 35 Fund Pubs. 20 and 38. Relation of 1634, 6, 7.

hope that, in return, he would obtain Baltimore's assistance in procuring a great sum of money due him from the royal exchequer. While there, Claiborne met them and told them "that the Indians were all in arms to resist us, having heard that 6 Spanish ships were a coming to destroy them all." White dryly remarks: "The rumor was most like to have been from himself."

### THE LANDING IN MARYLAND

On the 3rd of March the Ark and the Dove entered the Province of Maryland at the mouth of the Potomac River.<sup>41</sup> The colonists were now in "the country we so looked for," and thought the Chesapeake Bay "the most delightful water" they ever saw, "between two sweet lands." Calvert chose the southernmost river to "set down in," and changed its Indian name, Potomac, to St. Gregory's. Father White thought it "the sweetest and greatest river I have seen, so that the Thames is but a little finger to it, there are no marshes or swamps about it, but solid firm ground with great variety of wood, not choked up with undershrubs but commonly so far distant from each other as a coach and four horses may travel without molestation." The tiresome voyage was over and these joyful reports were sent within a month after the settlement from one who felt that they were now in "our own country." The hostile rumors spread by the Virginians caused the Indian king of Piscataway to draw together many bowmen<sup>42</sup> and to light signal fires by night to rouse the tribes against these strangers, who came in a "canoe" as big as an island, so different from the pinnaces which usually traded in the river. Slowly the vessels sailed up the Potomac to the Heron Islands. The island on

<sup>41</sup> They called the southern point Cape St. Gregory, now Smith Point, and the northern point Cape St. Michael's, now Point Look-out.

<sup>42</sup> Father White guesses 500; Relation of 1634 says 1500.

which the colonists first landed has been thought by many to have been that now known as Heron Island, almost submerged, but the language of the narratives, when carefully studied, seems to show that the settlers knew a group of several islands as Heron Islands, the name being later restricted to one of them. The other three were St. Clement's, now called Blackiston's Island; St. Katherine's, which yet bears that name; and St. Cecilia's, now called St. Margaret's.<sup>43</sup> All three of these were evidently named from the fact that these saints were patrons of the first days of the voyage. The identification of St. Clement's Island seems fully proven, and is important, as there the first landing of the colonists took place. As the island was surrounded with shallow water, the only way of reaching the shore was by wading, and a shallop, which had been sent to the island that the voyagers' clothing might be washed, was unfortunately overturned as it returned, by which mishap "the maids which had been washing" were almost drowned and much of the linen was lost, "no small matter in these parts." The record of this misfortune, however, assures us that cleanliness has been held next to godliness in Maryland from the earliest times.

The island was estimated by Father White to contain 400 acres, though it probably was much smaller, as it was returned by the surveyor in 1639 as containing only 80<sup>"</sup> acres. In any case it was too small for the seat of Calvert's colony, and it was intended rather to erect on the island one of two forts to command the river, which was there narrowest. The other fort should be on the mainland over against it, and thus the Potomac should be kept from foreign trade for the sole benefit of Baltimore and his subjects. The island on which this first landing took place is described as covered with "poki-berries," which are "wild walnuts, hard of shell but with a sweet

<sup>43</sup> Thomas's *Chronicles of Colonial Md.* 13.

<sup>44</sup> Thomas's *Chronicles of Colonial Md.* 15.

kernel," acorns, black walnuts, cedar trees, sassafras, vines, salad-herbs, and the like.

The settlers took a large tree on this island, and making it into a cross,<sup>45</sup> the Governor and commissioners, with the rest of the chiefest adventurers, carried it to a place prepared for it. There they erected the cross, celebrated the mass, and took "solemn possession of the Country for our Saviour and for our Sovereign Lord the King of England." This was done on Tuesday, March 25, 1634, "Our blessed Lady's day in Lent." With this religious ceremony begin the acts of the settlers. McMahon calls this day the "birthday of a free people,"<sup>46</sup> worthy of commemoration to the latest day of their existence." This day "is identified with the origin of a free and happy State. It exhibits to us the foundations of government, laid broad and deep in the principles of civil and religious liberty. At a period when religious bigotry and intolerance seemed to be the badges of every Christian sect, and those who had dwelt under their oppressions, instead of learning tolerance from their experience, had but imbibed the spirit of their oppressors; and when the howlings of religious persecutions were heard everywhere around them, the Catholic and Protestant of Maryland were seen mingling in harmony, in the discharge of all their public and private duties, under a free government, which assured the rights of conscience to all."

#### CALVERT'S POTOMAC VOYAGE

At St. Clement's Island the Ark was left,<sup>47</sup> while Leonard Calvert, taking the Dove and another pinnace hired in Virginia, went four leagues up the river, both to explore the country, to speak with the emperor of Piscataway, and "declare to him the cause of the expedition."

<sup>45</sup> Relation of 1634, 8; 35 Fund Pub. 39.

<sup>46</sup> History of Md., p. 198, McMahon and many others seem erroneously to place this occurrence at St. Mary's.

<sup>47</sup> Relation of 1634, p. 9; of 1635, p. 6.

It was clearly necessary to cultivate good relations with the Indians, and when Calvert found the Indians fled from his first landing place, he went nine miles further up the river to "Patowmeck Town," probably at or near Aquia Creek. There he found the ruler, or werowance, was a child, and his uncle, Archihau or Archihoe, was regent.<sup>48</sup> The latter, "a grave and considerate man," gave them good welcome and listened with attention and seeming pleasure to the little discourse "touching the errors of his religion," which Father Altham gave, though the priest could proceed but little, as a Protestant, Capt. Henry Fleet, was the interpreter.<sup>49</sup> When Archihau, who was "of a very loving and kind nature," as Father White in his first enthusiasm judged that the Indians generally were, heard that the followers of Calvert came not to make war, but out of good-will to the Indians, and that they would soon come again to teach him further of the Christian religion, he

<sup>48</sup> Relation of 1635, p. 6.

<sup>49</sup> 7 Fund Pubs. 34, but Relation of 1635, p. 6, says they met him at Piscataway. Fleet had been captured by the Indians near the site of the city of Washington as early as 1621 and, on his return, seems to have spread abroad marvellous tales. By these representations, in Sept., 1627, he induced Wm. Cloberry to place the Paramour, a vessel of 100 tons, in his charge. On July 4, 1631, he sailed as factor of the ship, Warwick, from London for America; he visited New England and the Chesapeake and traded with the Indians there. He then returned to New England and traded, but came to Accomac on May 13, 1632. There he met Claiborne and, after a visit of 3 days, went with him across the Chesapeake and came to the town of Yaocomico, where he had lived with the Indians several years and which place he had visited the year previous. After trading along the Potomac for 3 months, he was arrested by Capt. John Utie for illicit trading. Fleet was brought before the Governor of Virginia. Some arrangement was made by him with Gov. Harvey, by virtue of which he retained the vessel for three years, though the owners maintained they had only given him commission for a year. After the Md. colonists came, on May 9, 1634, he was assigned 2000 acres on St. George's River, later known as the Manor of West St. Mary. Fleet later removed to Virginia, sat in the assembly there in 1652 and received a patent to trade in partnership with Claiborne in that year. He is last mentioned as an interpreter in 1654 (Neill, *Founders* 2ff.; Fleet's *Journal* of that voyage of 1631-2 is in Neill, *Founders* 19ff.; see 9 Fund Pubs. 65; Brown, *Genesis of U. S.* 892).

answered, "That is just what I wish. We will eat at the same table; my followers, too, shall go hunt for you and we will have all things in common." Leaving Potomac Town, Calvert and his pinnaces went twenty leagues further to Piscataway, the seat of the emperor. There he found the inhabitants assembled in arms to the number of several hundred. When signals of peace were made and Fleet had gone ashore "to invite the werowance to a parley," the Indian ruler, more fearless than the rest, "came aboard the pinnace with several attendants and was courteously entertained there." Calvert told him that they came to teach the Indians a "divine doctrine," whereby to "lead them to heaven," and also to bring to them the blessings of civilization, and asked him whether he "would be content" that Calvert and the colonists should "set down in his country," in case a convenient place should be found.<sup>50</sup> The werowance diplomatically replied "that he would not bid him go, neither would he bid him stay, but that he might use his own discretion." While the conversation continued, the Indians on the shore feared that harm was being done to their ruler. Perceiving this, the werowance commanded two of his retinue to go on shore and disabuse the tribesmen of their fear. They replied that they feared they should be killed, returning without their chief, whereupon he showed himself on deck and satisfied his people, telling them he was in safety. It was a picturesque scene, the two pinnaces of the Marylanders and three barks belonging to Captain Fleet lay in the Potomac, and on the north bank clustered the crowd of suspicious savages. The emperor was satisfied,<sup>51</sup> and Calvert returned to St. Clement's Isle, "viewing many parts of the shore on each side of the river, by the way, but not finding any where a field cleared and left by the Indians," which could be used for the settlement. During the expedition, the party left on

<sup>50</sup> Relation of 1635, p. 7.

<sup>51</sup> 35 Fund. Publs. 21.

board the Ark, among whom was Father White,<sup>52</sup> was busy in putting together the barge which had been brought in pieces from England, felling trees and cleaning pales for a palisade. The Indians gradually laid aside fear, came to the guard, which was kept night and day, and finally came on board the ship, expressing great wonder at its size and at the thunder of the ordnance.

#### THE FOUNDING OF ST. MARY'S

When Calvert had returned to St. Clement's, he resolved to take Fleet's advice and drop some nine leagues further down the Potomac to look for a site. Fleet was a most useful assistant, with his extensive knowledge of the country and the great esteem the aborigines had for him, because of his residence and trading many years among them. To win him from his opposition<sup>53</sup> to the new government, Calvert offered him a proportion of the beaver trade, if he would serve the Proprietary. Accepting this offer, he led Calvert in a barge to "a most convenient harbor and pleasant country lying on each side of it, with many large fields of excellent land, cleared from all wood."<sup>54</sup> This place was on a river, which they called St. George's, but which we now call St. Mary's, four or five leagues from the mouth of the Potomac.<sup>55</sup> It was known as the Town of Yaocomico, which was also the name of an Indian tribe dwelling there. It was a very commodious situation for a town, for the land was good, the air wholesome and pleasant. "Ships of any burthen" could lie in the harbor, which had a "bold shore." There was abundance of timber and fresh water and the place could easily be fortified.

<sup>52</sup> Relation of 1634, p. 11.

<sup>53</sup> He had been a fire-brand to inflame the Indians against us, writes Father White, 35 Fund Pubs. 40.

<sup>54</sup> 35 Fund Pubs. 21.

<sup>55</sup> St. George's River is now only applied to what Calvert called St. George's Creek. Thomas's Chronicles, 16.

Calvert went on shore there and, meeting the wero-wance, told him the reason of his coming. The wero-wance, with the characteristic taciturnity of the Indian, "made little answer," but entertained the party over night in his own wigwam, giving Calvert his own mat on the board floor for a bed. The next day, the wero-wance showed Calvert and his party the country, with its fresh-water streams and springs.<sup>56</sup> Calvert was so pleased that, determining to make the first colony there, he ordered the ship and pinnaces to come thither. To make this entry peaceable and safe, he presented the werowance or chief and the *wisoes* or elders of the town with axes, hoes, knives and some English cloth, such as is used in Indian trade. Accepting these kindly, they freely gave consent that Calvert and his company might live in one part of the town, surrendering their houses and some corn they had begun to plant there. They also promised to leave the whole town at the end of harvest, while the parties to the treaty made mutual promises to each other to live friendly and peaceably together and, if any injury should happen to be done on any part, that satisfaction should be made for the same. Thus honorably began Maryland's relations with the Indians, and, in general, the record of the province is as honorable as its beginning.

Thirty miles of ground were bought at this time, and the high-sounding name of Augusta Carolina<sup>57</sup> was given it, but the term was but little used, and was soon superseded by that of St. Mary's county, derived from the name of the first settlement. To the bay on which the town was situated and to the town itself, the name of St. Mary's was given in honor of the mother of Jesus Christ.

Three days after the conclusion of the treaty, the Ark and the pinnaces anchored in St. Mary's Bay, and on the

<sup>56</sup> It is noted that the main rivers are salt. Relation of 1635, p. 9.

<sup>57</sup> Cf. Prov. Ct., 4 Md. Arch. p. 17.

next day the settlers began to prepare for their houses.<sup>58</sup> Historians, following the relation of 1635, have commonly assigned the date of March 27, 1634, as that of the founding of St. Mary's. A careful examination of Father White's narrative and of the Relation of 1634, the earlier accounts, show that on May 27 the planters had been at St. Mary's only a month, and so must have come in April. They built first of all a "Court of Guard" and a store-house, sleeping on shipboard until these should be completed. The Indian chief dwelt on the left-hand or northern side of St. Mary's Bay, which is now called Church Point, while the colonists landed and laid out the town a little back from the water on the right-hand or southern side,<sup>59</sup> now known as Chancellor's Point. There, within a palisade of 120 yards square with four flanks, they mounted one piece of ordnance and "placed six murderers in posts most convenient," a fortification, writes Calvert to his partner Lechford, "sufficient to defend against any such weak enemies as we have reason to expect here."<sup>60</sup>

While this was building<sup>61</sup> Sir John Harvey came to visit Calvert, and during his visit the werowance of Patuxent also came, and a meeting of the three dignitaries was held in the great cabin on board the Ark, Fleet and one Master Golding acting as interpreters.<sup>62</sup> At this time, Fleet told the Indian that none other should trade with the Indians henceforth but the settlers of Yaocomico, and that the Governor of Maryland was not a king, but a great and rich man and a brother of the "great man of all" who should come later. It seems also that Fleet told the others that the Indian had gotten the idea from Claiborne that the Marylanders were "Waspaines" or Spaniards. Certainly the story, by some means, had gotten afloat among the Indians. During the interview, while the werowance sat

<sup>58</sup> Relation of 1635, p. 11.

<sup>59</sup> Thomas's Chronicles, 18.

<sup>60</sup> 35 Fund Pubs. 21.

<sup>61</sup> Relations of 1634, p. 13.

<sup>62</sup> Relation of 1635, p. 11; Coun., 5 Arch. 166. This Indian was not the head chief or "great king." Coun., Arch. 165.

between the two governors, one of his attendants came into the cabin, and fearing his chief was surprised, started and was "ready to have leaped overboard," remembering that the werowance had formerly been taken prisoner in Virginia.

While Harvey and the werowance were visiting Calvert, the store-house was completed and the ship unloaded. Remembering Baltimore's instructions, a formal ceremony took place, the colors being brought on shore,<sup>63</sup> attended by all the settlers in arms, both gentlemen and servants. The colors were received with a volley of shot, which was answered by the ordnance from the ships. Doubtless, then were read the charter and the Governor's commission, and a short declaration was made to the people of the Proprietary's intentions to endeavor the conversion of the savages to Christianity, to increase the King's empire and dominion in those parts, and do all he can for the good of "such of his countrymen as adventure their fortunes and themselves" in Maryland. Baltimore also wished the people to know that nothing but "unexpected accidents" had kept him from coming with the Ark and Dove, and that he trusted to come in another year. The werowance of Patuxent at that time warned the Indians of Yaocomico that they should carefully keep the league that they had made, saying: "When we shoot, our bowstrings give a twang that's heard but a little way off; but do you not hear what cracks their bowstrings (i. e., muskets and cannon) give?" When he left the place, several days later, he used many "Indian compliments," and said to Calvert: "I love the English so well that, if they should go about to kill me, if I had so much breath as to speak, I could command my people not to avenge my death, for I know they would not do such a thing

<sup>63</sup> 28 Fund Pubs. 136. Baltimore also directed all to take the oath of allegiance at this time. His lordship's secretary, John Bolles, should read the charter. I find no evidence that Bolles came to the province.

unless it were through mine own default."<sup>64</sup> The Yaocomicoes seem to have needed no advice to keep troth with the English. They felt the pressure of the fierce Susquehannocks or Susquesa-hanoughs from the north, who came often into their country "to waste and destroy," and had forced many of them to cross the Potomac to escape the raids. Seeing the English came so well provided with arms, the Yaocomicoes assured themselves of greater safety by living with the Maryland settlers. A few weeks before, the Indians were in arms against the English, with beacon-fires along all the banks, and now Father White writes that "they, like lambs, yield themselves, glad of our company, giving us houses and livings, for a trifle." Surely it was the hand of God. A few families of the Indians stayed during the whole of the first year and were of great use to the settlers. The men went daily with some of the Englishmen to hunt the deer, partridges, squirrels and turkeys, sometimes giving their booty to the settlers and again, especially if they were "of the meaner sort," selling it for knives and beads.<sup>65</sup> They also brought them great store of fish and oysters, and were said to have bartered them so much maize for truck that 1000 bushels were sent to New England to be exchanged for salt fish and other commodities. The Indian women and children came very frequently to the town, which fact was a certain proof of their confidence, and these squaws kindly showed the settlers how to prepare bread from the Indian corn bought at Barbadoes, which they used that they might "save their English provisions of meal and oatmeal."

In addition to building the palisaded fort and the houses,<sup>66</sup> the settlers at once began to plant corn and to set out gardens, sowing them with English seeds of all

<sup>64</sup> Relation of 1635, p. 12.

<sup>65</sup> The Indians provided game, before the white men dared to go into the woods or had leisure to do so. 35 Fund Pubs. 43.

<sup>66</sup> Relation of 1635, p. 14; 28 Fund Pubs. 139.

sorts. According to the Proprietor's instructions, they should build a convenient house for the seat of Lord Baltimore, or his governor in his absence, and send him a plat of it. They should also build a "church or chapel" adjacent to it. The pious Jesuits did not wait till this should be built, but took possession of one of the Indian cabins as the first chapel in Maryland, "having dressed it a little better." It was built in an oval form, 20 feet long and nine or ten feet high, with an opening in the roof half a yard square to let in the light and "let forth the smoke."

The instructions to Governor Calvert directed the planters to build their houses "near adjoining" one another, on regular streets, with gardens back of them. As soon as possible, the land necessary to be assigned to the adventurers should be surveyed<sup>67</sup> and allotted, according to the conditions of plantation. These allotments Baltimore promised to confirm by patent, and he merely asked for himself that his land be selected first, without making any "difference of proportion" between him and the other adventurers. These conditions of plantation provided that any Englishman who transported himself, properly equipped,<sup>68</sup> which equipment was duly itemized and with transportation charges was estimated at £20, should receive for himself in freehold estate 100 acres, with the same amount for his wife, 50 acres for each child above 16 years of age, and 50 acres for each woman servant under the age of 40 years, paying a quit-rent of 12 pence in the commodities of the country for every 50 acres.<sup>69</sup> For each male servant between the ages of 16 and 50 years so transported, 100 acres should be given on like conditions, while for every five men transported, the adventurer received not 500, but 1000 acres, to be

<sup>67</sup> Robert Simpson was the surveyor. 28 Fund Pubs. 138.

<sup>68</sup> The itemized list of requisites is very interesting. Relation, 1635, p. 46.

<sup>69</sup> A woman might transport herself or children on like conditions.

erected into a manor with all the privileges of the English ones. Baltimore did not intend his plantation to be purely an agricultural one, but directed his brother Leonard to search for a convenient place for the making of salt, and to find whether there is proper earth for making saltpetre as well as probability of iron or other mines.<sup>70</sup>

#### BEGINNINGS OF THE PROVINCIAL TRADE

While these matters were being attended to on shore, the Dove was following the "trade of beaver through all parts of the precincts of this province."<sup>71</sup> By reason of their late arrival, the adventurers lost the first part of the trade, for the Virginians had traded for 3000 skins, while the Marylanders took in only 298, weighing 451 pounds, together with 53 muskrat and 17 other skins. A small boat which was sent to "gather what scattering skins were to be had among the Indians," came back with a few in May, on the 30th of which month, Leonard Calvert wrote to his partner Lechford, from Old Point Comfort, telling him of the colony's experience hitherto. Though the return from their venture was small, Calvert is much encouraged for the future, for he thinks he can obtain a large part of the trade of the Massawomecks, who dwell ten days' journey to the north and formerly traded with Kirk, but now promise to come to St. Mary's, which is nearer them by half. Therefore, Calvert urges that there be sent double the amount of truck previously ventured. The quantity they "brought over last is nothing," Calvert wrote, compared to the possibility of the trade, and "there is nothing does more endanger the loss of commerce with the Indians than want of truck to barter with them."

<sup>70</sup> 28 Fund Pubs. 140.

<sup>71</sup> 35 Fund Pubs. 21. The Proprietor seems to have had a moiety of the trade and Fleet was given  $\frac{1}{6}$  interest in it. He borrowed 100 weight of beaver from Justinian Snow, factor for the adventurers, and there was some difficulty as to the repayment. 4 Md. Arch. Prov. Ct. 5, 7.

With the letters of Leonard Calvert came the copies of Father White's Narrative, which was dated May 27, and on the arrival of the ship, about the middle of July,<sup>72</sup> Baltimore hastened to publish the 1634 "Relation of Maryland." He must have been delighted to spread the news that the maize which his adventurers had planted was already "knee"<sup>73</sup> high" when the letters were written; that they thought, with proper wine presses and skill, they could make a ton of wine from the wild grapes on vines about the plantation; that they sent what they thought was iron stone, and that they had already procured 100 hogs and 30 cows from Accomack. The soil was so excellent<sup>74</sup> that one could not set down his foot without treading on strawberries, raspberries, fallen mulberry vines, acorns, walnuts, sassafras, "even in the wildest woods." The ground is commonly a "black mould above and a foot within ground of a reddish color." The country abounds with "delicate springs" and "birds diversely feathered there are infinite, as eagles, swans, hernes, geese, bittern, ducks, partridge, red, blue, party colored and the like, by which will appear the place abounds not alone with profit but also with pleasure." The site of St. Mary's is as noble "as could be wished and as good ground as I suppose is in all Europe."

The Lord Proprietary did not confine himself to the distribution of these pamphlets, but prepared to re-enforce his colony. Any one<sup>75</sup> who sent to the house of his brother-in-law, Mr. William Peasley, in Drury Lane, could "learn the certain time, when any of his Lordship's company is to go away," that he might join himself thereto.

Early in 1635 a new edition of the Relation appeared with an enlarged account of the country, a reprint of Capt. John Smith's map of Virginia, and an English trans-

<sup>72</sup> 35 Fund Pubs. 46.

<sup>74</sup> 35 Fund Pubs. 45.

<sup>73</sup> Relation of 1634, p. 21.

<sup>76</sup> Relation of 1635, p. 49.

lation of the charter of Maryland. In this pamphlet, we are informed<sup>76</sup> that the Proprietary has ordered convenient houses to be set up at St. Mary's, where all strangers may at their first coming be entertained.

During the summer of 1634 Calvert sent the Dove with a cargo of corn to Boston to trade for fish and other commodities. Winthrop notes the arrival of the vessel at Boston on August 29, with near all the company sick, and that the merchant died within one week afterwards. The Dove remained at Boston until October, and the seamen gave the austere Massachusetts men some trouble, reviling them with such terms as "holy brethren" when they came on board, and cursing and swearing "most horribly." The magistrates notified the Master that, as the disorders were committed on board ship, he ought to punish the offenders and requested him "to bring no more such disordered persons among us."<sup>77</sup>

Meanwhile all had not gone smoothly in Maryland and the planters had reason to obey the instruction<sup>78</sup> to be "mustered and trained in military discipline," and that they "cause constant watch and guard to be kept." We are ignorant of what happened at the conference between Calvert and Claiborne in Virginia, but we may be sure that the latter did not agree to submit to Baltimore, for, at a meeting of the Virginia Council, held on March 14, shortly after the Ark had sailed for the Potomac, Claiborne asked how he should "demean himself in respect of the Lord Baltimore's patent and his deputies." Though Harvey was present,<sup>79</sup> the Council answered that "they wondered why there should be any such question made," and that "they knew of no reason why they should render up the right of the Isle of Kent, more than any other formerly given to this colony." The validity of Bal-

<sup>76</sup> Relation of 1635, p. 64.

<sup>77</sup> i Winthrop 139, 145.

<sup>78</sup> 28 Fund Pubs. 139.

<sup>79</sup> There were nine men present in all. Coun., 5 Arch. 164.

timore's charter had not yet been decided in England, therefore they must maintain the rights and privileges of Virginia. Yet in obedience to the royal instructions, the Virginians would "observe all good correspondency" with the Marylanders, trusting that the latter would not intrench upon Virginia's interests. At the bottom of it all lay the question of the Indian fur trade, and we can imagine the anxious converse of Calvert and Harvey on the matter, during the visit of the latter to St. Mary's.

#### KENT ISLAND SETTLEMENT

Let us look back a little and see what was the position of Claiborne and his settlement on Kent Island at this time. After receiving the Scotch license to trade, in May, 1631, Claiborne sailed at once for America in the ship Africa,<sup>80</sup> as we have seen, and landed at Kent Island on August 17. On the voyage and shortly thereafter, six of the ablest servants died and the rest, weak like all new men during the process of acclimatization of the first year in Virginia, were not enough to carry on the plantation and defend it against the hostile Indians, who had lately killed the Dutch at Zwanendael on the Delaware River. To guard against these difficulties, he hired certain freemen in Virginia, at least ten in number, mostly from the parts about Kecoughtan or Hampton, to go to the island with him and work for Cloberry & Co. These men later testified that they were paid less than the current rate of wages in Virginia<sup>81</sup> and far less than they would have taken from any one, to whom they did not bear such love and good-will as they did to Claiborne. As least 30 or 40 men were needed for the security of the plantation, and during the fur trading season, which lasted from the beginning of March until the end of June, it was necessary to have three or four shallopss, or boats, out on the river,

<sup>80</sup> Coun., 5 Arch. 192, 197, 204, 220, 225, 232, 233.

<sup>81</sup> Coun., 5 Ass. 192, 198, 221, 226, 233.

each shallop manned by six or seven men. A less number, say four or five men, would have been in danger of being cut off by the Indians, as there would be no one to guard the arms in the boat, while the trading went on. An experienced trader like Claiborne, who knew the Indians and was liked by them "exceedingly," was able to make much greater profits than any new man could have made, especially in the early years,<sup>82</sup> before the competition of other traders became sharp and the price of beaver rose, as it did after Lord Baltimore's people came. They bartered not only for beaver from the Indians, but also for deer and other skins, for tobacco and corn. To provide for the plantation's needs, Claiborne brought from Virginia 28 to 30 neat cattle, a part of which was a herd of 12 cattle formerly the property of Sir Thomas Gates,<sup>83</sup> which Claiborne had left in care of his fellow-councillor, Capt. Thomas Purify, when he went to England in 1629. Their milk was a great nourishment to those on the plantation, and the herd had increased to about 150 head, when he went to England in 1637. So careful was he of the interests of the partnership servants that he reserved the milk for them alone, though the freemen who settled nearby would have given 100 pounds of tobacco yearly for the milk of each cow, which then sold for a shilling in money per gallon, and would have restored the cattle with increase at the end of the season, as is the custom in Virginia, for if "the grass on the island be not fed to cattle it wasteth, fadeth, and burneth away, becoming of no value."

There were hindrances to the prosperity of Kent Island in spite of his care and economy in payment for "truckling stuff, servants' apparel,<sup>84</sup> boats, housekeeping, servants'

<sup>82</sup> It was testified that he was more successful than Fleet or Hamor. *Coun.*, 5 Arch. 194, 200, 224.

<sup>83</sup> *Coun.*, 5 Arch. 192, 199, 206, 222, 226, 235, 238.

<sup>84</sup> At least £5.10.0 was usually allowed for this in Virginia. *Coun.*, 5 Arch. 214, 223, 226, 227.

wages, allowance to the several ministers, guns, munition, surgery, expenses in journeys, buying of a stock of hogs, working tools and other necessaries." Within twelve days after the goods were unloaded on the plantation, and while he was absent from it, on October 18, 1631, occurred a disastrous fire,<sup>85</sup> which destroyed the store-house they had just built, consumed a great part of the servants' clothes, as the day was warm and they were abroad, spoiled most of the trucking stuff, melting the beads into lumps, rendering the knives and scissors worth little or nothing, melting the sides and bottoms of kettles, wasting the copper, and spoiling the axes and hoes. Yet with this "burnt truck" and what else he could scrape together, Claiborne bought, in 1631 and 1632, 600 or 700 beaver skins<sup>86</sup> and 1500 pounds or more of beaver in 1633.

One of the servants had died on the voyage, but we know the names of the 16 that survived and their occupations. Thomas Bagwell was the trader, John Belson was carpenter, and John Parr hogkeeper. Three men and a boy were employed in the kitchen,<sup>87</sup> to dress victuals, make bread from corn, and do other work in the house; Joan Young, the first woman resident in Maryland, was employed "to wash our linen." Henry Pincke was "reader of prayers," but this first religious teacher in Maryland "broke his leg"<sup>88</sup> and was unserviceable." To the surgeon who set the leg was paid £4.3.0 or 250 pounds of tobacco on November 20, 1631, doubtless the first medical charge in Maryland. Six others, who were of the ablest men,<sup>89</sup> died within three or four months of the arrival, "largely

<sup>85</sup> Coun., 5 Arch. 204.

<sup>86</sup> Beaver was then worth about 6s and 7s a pound, but had much fallen by 1640. Coun., 5 Arch. 205.

<sup>87</sup> Henry East, Thomas Kendall, William Cocke and John Russell.

<sup>88</sup> Nearly every year Claiborne charges for "physic and chirurgery," or for "fruit, sugar, and spice for the sick." Claiborne clothed five of these servants.

<sup>89</sup> John Thompson, Philip Hamblyn, John Dunne, Christopher Fleming, John Butler, and Thomas Ivypland.

because of hardness endured by loss of goods & clothes " by the fire. The last servant, Richard Haulsey, was "thought by the men to have fyred the houses willingly & therefore, they would not endure him," whereupon Claiborne "sold his time, being a very untoward youth." In charge of this little company, in Claiborne's absence, was Arthur Ffiges as lieutenant, with a salary of £30 per year. In addition to the indentured servants, there were seven men<sup>90</sup> hired, either in Virginia or from among the passengers on the Africa.

#### GROWTH AT KENT ISLAND

In 1632, there were eight hired laborers and traders on the plantation, one new one being added to those employed in the previous year. In addition, we find Richard Popley, from whom Popley Island was named, as overseer of the men, a carpenter, a huntsman, and eleven indentured servants, of whom four are new men. Of the entire number, two are classed as hogkeepers, and several as traders. We note that Claiborne provided apparel for some of the servants and some of the hired laborers, and that the Rev. Richard James, first clergyman in Maryland, appears in that year. He received £60 as tithes for the year past, on March 24, 1632-3, and left the island in 1635, but his wife, Gertrude, remained for some years more. The little company seems to have been a fairly religious one, and we find charges in Claiborne's account for £2.5 on October 19, 1632, for Bibles and books of prayer in the house and boats, and on December 10, for a "black velvet cushion and black cloth for the pulpit," while on September 28, 1633, £3.7.0 were paid for "pewter dishes for the house of Jesus Christ," doubtless the first communion service in Maryland. Whether they built a special building for a church then we know not, but one

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<sup>90</sup> At £3.10.0 per year. Tobacco was valued at 4d per pound.

was constructed in 1636. Claiborne wrote: "They built houses, palisaded a fort against the Indians, cleared the ground, planted corn and victuals, and tended hogs" during the years 1631 and 1632. The trading with the Indians, however, was the principal work, and frequent trips were made to Virginia for supplies. In addition to the small boats, a pinnace was kept out. Of this Thomas Butler was master with a yearly salary of £22.

Claiborne had written to England, immediately after the fire, urging the speedy sending of more supplies, but though these letters were received in January or February, 1631-2, Cloberry & Co. sent nothing for over a twelvemonth, and then an insufficient cargo was received in the Defence.<sup>51</sup> Meanwhile Claiborne had to live on the island, to regain the loss sustained by the fire, and so lost his Virginia offices, as he alleged, and also suffered "many wants and miseries, often lying on the ground and in the woods in extremity of heat and cold, & hath been shipwrecked & often been taken prisoner by the Indians & like to be slain by them, and hath lost the use of his right arm."

In the year 1633 we find the first record of an African in Maryland, for Claiborne paid on November 23, £1.5.0 "for a neger's service some months." Twenty-two persons were employed on the joint stock that year, there being a new indentured servant and a new maid, Joan Qually. That year they had a gardener and planted garden seeds and also 2000 plants of tobacco. It is interesting to read that Claiborne allowed the men a certain amount of tobacco every year "to drink."

A great hindrance was the failure of the English merchants to send truck, especially in 1632 and 1633. Then Claiborne could have bought several thousand skins more, had he been properly provided with truck for the boats he

<sup>51</sup> 5 Arch. Coun. 194, 201, 205, 207, 225. Cloberry & Co. sent over the Defence in February, 1632-3, with a cargo of iron, duffels, etc., valued at £170.

had fitted out. At times the Indians even had to take away beaver skins they had brought to barter. Not only was there lack of truck, but also of supplies for the plantation,<sup>92</sup> so that after waiting long in vain for them, Claiborne was necessitated to send to Virginia and purchase at greatly increased prices.<sup>93</sup> There was great want of ammunition also,<sup>94</sup> which not only hindered trade, but endangered the very life of the planters. At times the people were almost afraid to stir out of doors, two persons were killed and two more injured on one of the plantations near that of the partnership, and the people complained to Claiborne, while one shrewd fellow cut loopholes in all the houses and told the Indians loafing around that their treacherous schemes were discovered and that preparations were being made to shoot them, with the result that they departed.<sup>95</sup> In the Indian trade, too, it was necessary to allow the aborigines to toss over the goods, or they went away "with distaste." As a result they were "very tedious" in viewing the goods, and so much was stolen by the Indians and given as presents to them that no inventory could be kept and it was possible only for the men in the shallop to report on their return that they had bought so many skins and had so much truck left.<sup>95a</sup>

#### CLAIBORNE AND HIS PARTNERS.

In 1634 the plantation was "much hindered and molested by Indians falling out with us and killing our men and by the Marylanders hindering our trade," as Claiborne wrote. Only six of the original indentured servants remained,<sup>96</sup> but 22 men were maintained on the joint stock throughout the year. Among the new names

<sup>92</sup> Coun., 5 Arch. 193, 199, 206, 223.

<sup>93</sup> Coun., 5 Arch. 193, 229.

<sup>94</sup> Coun., 5 Arch. 199, 206.

<sup>95</sup> Coun., 5 Arch. 190, 194, 201, 207, 211, 225.

<sup>95a</sup> Coun., 5 Arch. 190, 194, 200, 224.

<sup>96</sup> Claiborne says he bought 11, but this must mean hired.

is that of Thomas Smith, storekeeper, who received an annual salary of £20, and of whom we shall hear again. During the year Claiborne bought two quilted armor coats, and built the pinnace *Longtail*,<sup>97</sup> of which Thomas Cole was made master. On April 30, Claiborne recorded that they "paid our landlord in truck, for the purchase of our island." I am not sure of the meaning of this item, but the wonder suggests itself whether, after the Calvert party came, it was not thought wise by the Kent Islanders to strengthen their occupation tenure by a purchase of the land from the Indians. During the year, they planted Popley's Island, but were put from thence, either by Calvert's people or the Indians, in two or three months. There was considerable recrimination indulged in, later, by both Claiborne and Cloberry & Co., as to their relative responsibility for the hostility to Calvert. Cloberry & Co. maintained that the chief reason that the Maryland charter had been granted was, because Claiborne did not give timely notice of his proceedings in the Chesapeake, and that, after the grant, they had several conferences with Baltimore and might have made an arrangement with him, but that Claiborne wrote he did "wholly dislike" to have to do with "Jesuitical papists," such as Baltimore and his agents. To be dependent on him or his governors, he held to be intolerable, and believed that Baltimore's rights did not extend over Kent Island, as it was cultivated before the charter was granted, and probably was north of the 40th parallel of latitude.<sup>98</sup> Further, he reported that Calvert's party carried matters with a high hand and thought all men thieves and intruders but themselves, while "to make their actions look fairer in the eyes of cruel papists, they embroidered them with effusion of native blood." There is no recorded ground for this last

<sup>97</sup> A flag and "ancient" were bought for it April 10.

<sup>98</sup> See Sir Edmund Plowden's Description of New Albion in Neill, *Founders*, 56.

charge. Claiborne, on the other hand, said that he opposed Baltimore, chiefly because his London partners wrote him that they would rather lose all than come under Baltimore, and doubted not but that they could obtain a grant that would overthrow the charter of Maryland. Each accused the other of deceitfully approaching Baltimore.

About this time, either because of discontent with Claiborne or disgust with the whole enterprise, Thompson and Turgis sold out their shares to Cloberry, and Delabarr his to one Murehead. Claiborne later claimed that these transfers were not legal, for he never consented to the admission of the new partner. At any rate, because of the change in ownership or with a desire to check Baltimore's men, the English partners now took vigorous steps to fit out a new expedition.

In December, 1634,<sup>99</sup> the ships James and Revenge came over, the former bringing 30<sup>99a</sup> men and a cargo which Cloberry & Co. valued at £1138, and the latter seven men and a cargo valued at £311. Among the men were sawyers, smiths, carpenters and millwrights, to erect grist mills at Kecoughtan and Kent Island, but the supplies they brought were not sufficient,<sup>100</sup> nor of good quality, nor suited to the trade, so that the Indians would buy but little of the truck.

#### CALVERT AND CLAIBORNE

Claiborne's greatest trouble was caused, however, by the arrival of the Maryland party. He tells us that, by proclamation<sup>101</sup> of April 8, 1634, they interdicted trade and surprised boats, some of which were out of their limits, which probably means they were near Kent Island. We have no other record of the proclamation, but it is probable enough. Probably about this time, Captain Fleet

<sup>99</sup> Coun., 5 Arch. 235.

<sup>99a</sup> Claiborne's account names only 22.

<sup>100</sup> Coun., 5 Arch. 194, 201, 205, 207, 225.

<sup>101</sup> Coun., 3 Arch. 32.

talked with Claiborne,<sup>102</sup> and "trading without leave got about 200 skins," and, as Lord Baltimore's men "feared, incensed the Indians against us." Because of the accusation brought against Claiborne of having told the Indians that Calvert's party were Spaniards,<sup>103</sup> and on June 20, at Patuxent, there was a meeting of four of the Virginia<sup>103a</sup> Council, with Claiborne, George Calvert and Frederick Wintour being present on the part of Maryland, to question the Indian chiefs as to the origin of the rumor. They admitted they had thought Calvert's party were "Waspaines," but denied that Claiborne had told them so, or that Fleet had truthfully interpreted what the werowance had said in the cabin of the Ark.<sup>104</sup>

Early in July, Capt. Thomas Young,<sup>104a</sup> with his ship, arrived at Point Comfort and, descrying a small bark, sent his lieutenant to learn news from her. She was Claiborne's boat, and, learning that he was on another ship, the lieutenant went thither and "fell in talk concerning my Lord Baltimore's company." He soon saw that troubles existed between the Kent Islanders and them, and "that a man might read much malice in Claiborne's heart towards Baltimore." On his return, the lieutenant brought Claiborne with him and he remained on Young's ship until morning. He said that Harvey had gone to St. Mary's to hear and compose the differences and had just returned for the same purpose with Calvert, Cornwallis,

<sup>102</sup> 35 Fund Pubs. 40; 7 Fund Pubs. 35; Relation of 1635, p. 14.

<sup>103</sup> Coun., 5 Arch. 165.

<sup>103a</sup> Capt. John Utie, who came to Virginia in 1620 and settled later Spesutia Island in the Chesapeake; Capt. Samuel Matthews, who came to Virginia in 1622 and lived near Newport News, of whom we shall hear later; Capt. Wm. Price, and Thos. Hinton. Neill, *Founders*, 49.

<sup>104</sup> Fleet seems to have given some testimony under oath against Claiborne. 28 Fund Pub. 142.

<sup>104a</sup> 9 Fund Pubs. 285 contains letter of Capt. Thos. Young to Sir Toby Matthew, July 13, 1634, from Jamestown. Young was uncle to George and Robert Evelyn. Another letter from him to Secretary Windebank follows, p. 300, concerning the Dutch on the Delaware.

Hawley, and other principal gentlemen of Maryland. Claiborne would not remain, but intended to retire to "his own plantation, under pretense that he went thither to take order for the securing thereof against certain Indians, who had lately, as he understood, killed a man & a boy of his." Young found him "subtile & fair spoken," but most bitter against "my Lord's company." He told Young he had, at first, borne good correspondency with them and furnished them with hogs and other provisions, until Calvert had given directions to take and seize him and his boats that went to trade and had accused him to the Governor of Virginia "for animating and conspiring with the Indians" to cut them off. Governor Harvey appointed certain commissioners from Virginia to join with Maryland commissioners to examine the truth of that accusation and they found it groundless. Now they come for a reconciliation, but Claiborne will not be present.

After Claiborne left him, Young visited Harvey in the other ship and found with him only Cornwallis, as Calvert fell sick by the way and returned. Taking Cornwallis aside, Young told him of the discourse with Claiborne. Cornwallis answered: "Claiborne dealt very unworthily and falsely with me. He labored to have the Indians supplant us, as we were Spaniards, & only Captain Fleet's persuasion prevented the Indians from attempting this. Not only confession of Indians but also that of Christians on oath proved the plot and some of the principal counsellors of Virginia might justly be suspected of having abetted Claiborne to this foul practice." When Calvert complained to Harvey, he ordered Claiborne's arrest and confinement in the hands of Matthews and Utie, two of the Virginia Council, who were his "private friends." Harvey ordered them to take Claiborne to St. Mary's and meet Cornwallis and Hawley there, keeping Claiborne from any conference or messages to the Indians. From St. Mary's, they should go to the Indians and examine them in Claiborne's absence. Matthews, who

was "the person on whom the strength & sinews of their faction depends," and Utie did not intend to comply with Harvey's order, but "subtilely inveigled into their company<sup>104b</sup> two very young gentlemen," George Calvert and Wintour, and persuaded them "with fair words, finding them in a jovial humor," to "accompany them to the examination of the Indians." So Calvert and Wintour went as the Maryland commissioners, and also Claiborne came along, with a servant of his as an interpreter. While Leonard Calvert and Harvey waited them at St. Mary's, the examiners, in Claiborne's presence, asked the Indians such questions as would best serve his advantage and caused the interpreter to frame such answers from the Indians as best suited their purposes. Then they reduced the examination to writing and induced George Calvert<sup>104c</sup> and Wintour to sign the paper. This they sent to St. Mary's by one of the Virginia Council with the Indian King of Patuxent (Patterpunt) to justify the proceedings. Harvey was informed that they would await him at Kecoughtan, but found all gone when he came thither. Cornwallis added that there had been no attempt by Baltimore's party to seize Claiborne and that they offered him "all fair correspondence, with as full liberty to trade as themselves, but he refused it, wherefore the Governor gave order to forbid him to trade." We can clearly see the irreconcilable nature of the parties to the conflict.

Later in the season,<sup>105</sup> letters came from England both to Virginia from the Privy Council, and to Calvert from his brother, the Proprietary. The former, dated July 22, encouraged<sup>106</sup> the opposition to Maryland, as it assured the planters, for their better encouragement, that the revocation of the charter of Virginia had meant no impeach-

<sup>104b</sup> He says Price and Hinton went without, or rather contrary to, order.

<sup>104c</sup> This probably explains the legend that he went over to Claiborne.

<sup>105</sup> Coun., 5 Arch. 168.

<sup>106</sup> Coun., 3 Arch. 32.

ment of the interest of the individual planters. While this was nothing new, Claiborne solaced himself with the thought that it confirmed his right to a free Indian trade which the Marylanders had denied. Cecil's letter to his brother, dated September 4, directed him to seize Claiborne and to detain him a close prisoner at St. Mary's,<sup>107</sup> and that he also take possession, if possible, of the Kent Island plantation and hold both until further word. Eleven days later, Baltimore wrote<sup>108</sup> Secretary Windebank from Wardour Castle that, since the return of the Ark from Maryland, he had several times waited on him in London and now writes to express his thanks for Harvey's "noble and friendly manner unto me" and to send therewith, by Mr. Peasley, papers concerning Claiborne's "malicious" behavior. He also asks that a royal letter be sent to Harvey, commanding his conduct, or, if there be not time for this, that Windebank himself write by the next ship to avert the danger of the overthrow of the Maryland plantation.<sup>109</sup> Windebank wrote the desired letter and the royal missive to Harvey soon followed. Unhappily, the effect of these letters was nullified through the efforts of Claiborne's English partners. Within a fortnight after the royal letter to Harvey, a petition from Cloberry & Co. to the King secured a letter under the royal signet which was sent to the Governor and Council of Virginia in the last ships leaving England that year for Virginia.<sup>110</sup> From the petition we learn that Baltimore's men had already shot at the men and boats of Cloberry & Co. trading in Chesapeake<sup>111</sup> Bay. Calvert was away from London and "brother Peasley" must have been napping, when "Lord Baltimore, as all other pretenders, under him,

<sup>107</sup> Coun., 5 Arch. 168.

<sup>108</sup> Coun., 3 Arch. 25.

<sup>109</sup> Coun., 3 Arch. 26, 27.

<sup>110</sup> Coun., 3 Arch. 28, 29.

<sup>111</sup> Relation of 1635, p. 41. There is a story of a struggle between the Susquehannocks and Wicomesses on Kent Island in 1634, in which three out of a party of 5 of the former tribe as well as three of Claiborne's men and some of his cattle were killed by the latter.

or otherwise, to plantations in those parts" were prohibited from doing Cloberry & Co. any violence or "from disturbing or hindering them in their honest proceedings and trade in the Kentish Island near to Virginia," which they have planted and inhabited "by our commission." All officers in America were directed to aid and assist Cloberry & Co., that they may peaceably enjoy the fruits of their labor.

Harvey received the royal letter of commendation in December and answered it at once, expressing his gratitude, but regretting that his power is limited by the Council, in which almost all are against him in what regards Maryland. This faction which he suspects is nourished from England, and has caused the common people to go so far as to say that they would rather knock their cattle on their heads than to sell them to Maryland,<sup>112</sup> while there are many meetings and consultations between Claiborne and the other members of the Council.

After the settlers had been in Maryland nearly a year, Calvert called an assembly of the "people inhabiting this colony of St. Mary's." As the proceedings are lost we know almost nothing of its transactions, but we are sure that it passed certain "wholesome laws and ordinances" for the welfare of the province and that among these laws was one of February 26, 1634-5,<sup>112a</sup> enacting that offenders in all murders and felonies should suffer the same punishment as would be borne by like criminals in England. Baltimore's claim to initiative in law-making, doubtless, led him to refuse to assent to the statutes.

#### PETTY WARFARE

Now begins a series of petty conflicts, invasions and naval battles which remind one of the struggles between the old Greek republics.

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<sup>112</sup> Coun., 3 Arch. 30. Harvey sent some of his own cows over.

<sup>112a</sup> Ass. 1 Arch. 23.

When the winter of 1634-35 wore to a close, Claiborne sent out the pinnace Longtail<sup>113</sup> to trade for corn and furs. Thomas Smith was in command of the vessel and he sailed right across the bay to Mattapany, on the Patuxent River, to beard the lion in his den and trade in the neighborhood of St. Mary's. On April 5, the day after the Longtail's arrival, Fleet, who had become reconciled to Calvert, with three others, came overland<sup>114</sup> and asked by what right Smith traded there. He replied, "By virtue of his Majesty's Commission and letter to Capt. Claiborne." Fleet read the copies which Smith had and said, "This does not license Capt. Claiborne to trade further than the Isle of Kent," while Capt. Humber, one of his party, added, "It is a false copy and grounded upon false information. Come, let us board them." Smith cried out: "You had best take heed what you do; it is ill jesting with paper which came from his Majesty," but Fleet refused to show his commission, entered the vessel and turned the crew on shore without arms. Smith asked for arms to defend himself and his men against the Indians, and Fleet retorted they were as safe as if they were aboard. That night the men slept in the woods and then they went on foot to "Maryland," as Claiborne's party called St. Mary's. Smith meantime was taken with Fleet in the small boat of the pinnace. When they came to St. Mary's, they found Calvert away and Cornwallis acting as his deputy. Smith made complaint to him that his vessel had been taken. "They did not more than what they had order for to do," answered Cornwallis, "to stop all vessels they should find trading in the Province."<sup>115</sup> After waiting two days, Calvert returned

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<sup>113</sup> 28 Fund Pubs. 141-149.

<sup>114</sup> On the way to the river, at the Indian town, Fleet and his party seized Henry Ewbank, one of Smith's party, and carried him with them. 28 Fund Pubs. 146.

<sup>115</sup> Cornwallis said that Smith's credentials were probably forged, and at any rate only covered Kent Island.

and sent for Smith and his party at Cornwallis's house. The Governor then said he would keep the vessel and refused to return the men to Kent Island, though he offered to send them to Virginia or England. Smith refused this offer and said the Islanders were in want of corn. Calvert replied this could not be. After waiting four or five days and seeing no prospect of release of the pinnace, Smith asked for a boat with which to return home. This request was refused, but Calvert permitted Smith to make arrangements with Indians for transportation and so the Islanders were sent away with only one gun, which belonged to Smith, and without victuals. The treatment was harsh, undoubtedly, but it must be remembered that the Longtail was trading within the undoubted limits of Baltimore's territory and against his express orders.

After the seizure of the Longtail, a sort of petty warfare between the settlers of Kent Island and those of St. Mary's lasted for three years. Of the year 1635, Claiborne writes: "We did little good and had many hindrances from the Marylanders." Yet they built two windmills, buying stones from Virginia, as those brought from England proved to be unsuitable.<sup>116</sup> Claiborne disapproved of the policy of the Londoners to build mills, rape-oil and iron works, but seems to have entered heartily into the manufacture of pipestaves.

Meanwhile he wrote of a great trade and that the hogs and cattle increased rapidly. In five years he said he sent 5000 pounds of furs to England which were sold for £3500. With Alexander Mountney and John Smyth, he brought freemen to the island and planted "Craford,"<sup>117</sup> by which settlement, five miles from the main one, the island was better protected. In this year there were 38 persons on the joint stock, four of whom were millwrights and car-

<sup>116</sup> 5 Md. Arch. Coun. 228, 236.

<sup>117</sup> 5 Md. Arch. Coun. 212, 220, 237. Claiborne borrowed the company's servants and lent his in return.

penters, two smiths, one a sawyer, one a tailor, one a planter, one a gardener, one a seaboy, six woodcutters and laborers, three maidservants<sup>118</sup> in kitchen and dairy and four men were employed in the kitchen.

To retaliate for the loss of the Longtail, Claiborne sent forth Lieutenant Ratcliffe Warren in the Cockatrice with thirteen armed men, with orders to demand back that vessel and to seize and capture any of the pinnaces or other vessels belonging to the government of St. Mary's. When Calvert heard of this he fitted out two pinnaces, the St. Margaret and St. Helen.<sup>119</sup> The hostile vessels met in the Pocomoke on April 23, about a fortnight after Smith's return to Kent, and in the combat that followed, there were killed William Ashmore, of the St. Mary's men, and Lieutenant Warren, John Belson, one of the Africa's party, and William Dawson, who came to the island in 1634.<sup>120</sup> Three more of Claiborne's men were wounded.<sup>121</sup> This first inland combat between white men in American waters was alleged by the Calvert party to have been begun by the Kent Islanders and led to the trial of Smith and Claiborne by the Assembly in 1638. On May 10, Cornwallis, who commanded the Maryland pinnaces, seized Smith as a prisoner in the harbor of Great Wighcomoco, but he seems to have been released or to have escaped for the time, as he received payment from the joint stock on April 20, 1637, for trading.

#### HARVEY'S OVERTHROW

These stormy events created a great commotion in Virginia. In the preceding year, Capt. Thomas Young wrote

<sup>118</sup> Joan Qually, Mary Martyn, Joyce Davis.

<sup>119</sup> I Scharf, 109; Neill, Founders, 51; Browne, 34; 5 Md. Arch. Coun. 169; 3 Md. Arch. Coun. 39.

<sup>120</sup> I Md. Arch. Ass. 17. Claiborne alleged that he sent word to Calvert to come and retake a boat, seized by Warren, filled with Maryland produce.

<sup>121</sup> 3 Md. Arch. Coun. 32.

from Jamestown to Secretary Windebank<sup>122</sup> that the "State wherein my Lord Baltimore's Plantation stands with those of Virginia" may "prove dangerous enough for them, if there be not some present order taken in England, for suppressing the insolence of Claiborne and his accomplices and for disjointing this faction, which is so fast linked and united, as, I am persuaded, will not by the Governor<sup>123</sup> be easily dissevered, or overruled, without some strong and powerful addition to his present authority, by some new powers from England. And it will be to little purpose, for my Lord to proceed in his colony, against which they have so exasperated and incensed all the English colony of Virginia, as here it is accounted a crime almost as heinous as treason to favor, nay, to speak well of that colony of my Lord's. And, I have observed, myself, a palpable kind of strangeness and distance between those of the best sort in this country, which have formerly been very familiar and loving to one another, only because the one hath been suspected to have been a well wisher to the Plantation of Maryland." When the feeling was such before the conflicts and when we learn that Governor Harvey was disliked by the Virginians for other reasons, we are not surprised to learn that four days after the skirmish, and, probably before news of it had come, a public meeting was held at the house of the Speaker of the Assembly at Yorktown to consider the Governor's conduct.<sup>124</sup> Harvey had upheld the seizure of the Longtail by the Marylanders, contrary to the express commands of the King, the people indignantly said, and had refused to read these commands to the Council, alleging that they were "surreptitiously gotten." The next day, the Governor called a meeting of the Council, wishing to have the petitioners of the day before severely punished. A violent altercation occurred, resulting in the arrest of Harvey for treason, in not deliver-

<sup>122</sup> July, 1634, 4 Series, Vol. 9, Mass. Hist. Soc. Colls.

<sup>123</sup> I. e., Harvey.      <sup>124</sup> Neill, *Founders*, 52; Md. Arch. Coun. 34.

ing the Council the royal letters. A week later, the Council, led chiefly by Utie and Matthews, heard the "innumerable grievances" of the people and determined to choose a new governor, Captain John West, brother to Lord Delaware, and to send Harvey to England. The chief allegation against him was "that he was a Marylander, that is one that favored too much my Lord Baltimore's Plantation to their prejudice."<sup>125</sup> Believing that Harvey's encouragement was one reason for Calvert's vigorous action, the Virginians<sup>126</sup> sent Utie and Pierce to Maryland, with letters desiring Calvert and his Council to "desist from violent proceedings," and promising them "all fair correspondency on behalf of the inhabitants of the isle of Kent, until we understood his Majesty's further pleasure." Before the Virginians received an answer, Claiborne came, on May 23, asking for redress. Letters were dispatched to England at once by Richard Kemp,<sup>127</sup> Secretary of the Colony, and Samuel Matthews, on the part of the Council, telling why Harvey was sent home. Claiborne also wrote to Secretary Coke, complains bitterly of his "cruel neighbors, who have not only trampled over all rights but contemned the express commands of his Majesty, under the protection whereof I deemed myself so safe that I provided not enough against their violence and so perished by security," and asks for "speedy signification" of Charles's pleasure.

Sir John Harvey and these letters arrived in England on the 24th of June, after a quick voyage.<sup>128</sup> The Privy Council, on July 2, ordered both parties to come before the Attorney-General for examination. We have but little information as to the course of events. On July 14, Harvey wrote to Secretary Windebank that the chief charge against him was that he was about to betray the fort into

<sup>125</sup> Correspondence of Earl of Stafford; Neill, *Founders*, 53.

<sup>126</sup> Neill says on May 7.

<sup>127</sup> 3 Md. Arch. Coun. 31-37.

<sup>128</sup> 3 Md. Arch. Coun. 38.

the hands of the Marylanders, the enemies of the Virginians, and that he fears they intend no less than the subjection of Maryland.<sup>129</sup> On the other hand, Governor West wrote the Lords Commissioners of Plantations,<sup>130</sup> on March 28, 1636; "Without infringing his Majesty's grant to the Lord Baltimore, we have taken the nearest course for avoiding of further unnatural broils between them of Maryland and those of the Isle of Kent." "This was done by putting under deep bond," to keep the King's peace both Claiborne "the Commander" of the Isle of Kent, and such of the Calvert party as come to Virginia. Constant watchfulness was needed in England. In 1635, Hawley returned thither, to justify Cornwallis's conduct in the skirmish on the Pocomoke and was called before the Privy Council on December 11, when Harvey was examined, and it was charged against Francis Rabnett, a servant of one of the Wintours, that he declared it was "lawful & meritorious to kill a heretic King." Hawley was then asked, if he had ever said "that he was come to plant in Maryland the Romish religion" "& utterly denied" this.<sup>130a</sup> He had to admit, however, that mass was publicly celebrated in the province.

#### THE COMING OF CAPT. EVELIN

The loss of the Longtail and the warfare with the Marylanders caused the Kent Island settlement to be in sore straits for corn, which they could not obtain from the Indians without boat or truck.<sup>131</sup> Philip Taylor of Accomack, trading for Cloberry and Murehead in the Potomac, was several times violently assaulted by the St. Mary's men with armed men, guns, and Indians, and his pinnace, boat and goods were seized, but in some manner he escaped, and in June brought a most welcome supply of corn to the plantation, probably in the new pinnace which Clai-

<sup>129</sup> 3 Md. Arch. Coun. 39.

<sup>130</sup> 3 Md. Arch. Coun. 40.

<sup>130a</sup> Neill, *Founders*, 91.

<sup>131</sup> 5 Md. Arch. Coun. 190, 194, 200, 207, 214, 224.

borne bought in that month. Many writers have thought that the Kent Island settlement is shown by this dearth not to be an "established plantation, but rather a trading post,"<sup>132</sup> but a further examination shows that, while there was not enough corn raised to supply the settlement for the whole year, yet considerable planting was done, especially of tobacco and vegetables. The only other glimpse we have of Kent Island for the year is that the religious services on the plantation were kept up, and that, after Mr. James returned to England leaving his wife on the island, Rev. Messrs. Cotton and Hampton came over, each for about half of the time. Other independent settlers came and took up land, paying Claiborne a yearly rent of 2 capons therefor.<sup>133</sup>

In 1636, 29 men are recorded as having been employed on the joint stock account<sup>134</sup> and Claiborne adds: "This year our works were as other years in trading and planting, but especially were we employed in perfecting the mills. We framed two other mills, perfectly, so far as we could, ready to set up. We framed the church. We sawed divers stocks to boards." One of the men went to the Susquehannoughs, lived with them, was interpreter and helped the trade.

In this year, the London partners<sup>135</sup> sent over two vessels: the John and Barbara, and the Sara and Elizabeth, with a cargo of truck they valued at £3000 and 18 men. Cloberry and Murehead later testified that Claiborne had written them that he was coming to England to answer Baltimore's complaints and asked that another be sent to take possession of the islands and goods and that an accountant be also sent.<sup>136</sup> So Capt. George Evelin was sent

<sup>132</sup> Cf. Hall, Lord's Baltimore 43.

<sup>133</sup> 3 Md. Arch. Coun. 95.

<sup>134</sup> Joane Vizard, Mary Martin, Anne Matthews were the maids.

<sup>135</sup> In 1637, Cloberry & Co. are said by Claiborne also to have sent a vessel to Barbary.

<sup>136</sup> Claiborne said they asked him to come and Evelin was sent over without his consent.

as agent and commander of Kent and John Herriott as accountant. Herriott soon died and there was some difficulty about the sale of his goods, which it was alleged Claiborne had undervalued.<sup>137</sup>

One of the emigrants on the *Sara and Elizabeth*, Robert Turtle, testified that he found at the settlement; a fort, divers houses, windmills, and a smith's forge. At first, Evelin seems to have gotten along well with Claiborne and to have deferred to his experienced judgment in the employment of servants. Evelin was a nephew of Capt. Thomas Young,<sup>138</sup> of whom we have heard, and a brother of Robert Evelin, who had previously voyaged to the Delaware and later settled in Virginia. George Evelin was evidently acquainted with the Calvert family, was born in London, January 31, 1592/3 and married Jane, daughter of Richard Craney of Dorset<sup>139</sup>. When he landed on Kent Island, in November, 1636, he is said to have spoken against the claims of Lord Baltimore and to have "alleged that Claiborne's commission from the King and the King's letter in confirmation thereof was firm and strong against the Maryland patent. The grandfather of Leonard Calvert was but a grazier, while Leonard himself, such a fellow as he, a very dunce and blockhead when he went to school, is come to this."

In February, 1636-7, a pinnace came up to Kent Island, bearing servants and goods which had been brought over in the *Sara and Elizabeth* and, on the same day, Evelin took a part of the truck and went trading to the "Poto-mec" River. During this trip, Evelin seems to have gone to St. Mary's or Virginia, and an interview with Calvert which he had there changed his mind. Doubtless fear of this led Claiborne, in May, 1637, on the eve of

<sup>137</sup> 5 Md. Arch. Coun. 220, 239.

<sup>138</sup> 5 Md. Arch. Coun. 181. Neill, *Founders*, 54. S. F. Streeter wrote sketch of Geo. Evelin, very unfavorable to him, and published as 2 Fund Pubs. "The First Commander of Kent Island." The title is a misnomer, Claiborne was the first. Brown's *Genesis of U. S.* 888.

<sup>139</sup> 5 Md. Arch. Coun. 214, 230, 236.

his departure in the pinnace Elizabeth, to ask Evelin that they sign and deliver to each other mutual inventories<sup>140</sup> of the stock and that Evelin give him a bond not to deliver the Plantation, or Islands, or any part of them, to the Marylanders, or to any other, and not to remove any of the servants from Kent Island.<sup>141</sup> Evelin replied brusquely that he did not care to have an assignment of the lands and goods from Claiborne. He would have them, whether Claiborne would or no, for he had more to do with them than Claiborne had. With these words, he showed the power of attorney from Cloberry & Co. to Claiborne, for the first time.<sup>142</sup> Previously, Evelin seems to have acted as Claiborne's deputy, but now there was clearly nothing for the latter to do, but to leave the plantation unconditionally in Evelin's hands, as he did three or four days later. Evelin followed to Virginia in June, and going to Jamestown, showed his power of attorney from Cloberry and Murehead to the Governor and Council there. He was then permitted to take the pinnace Elizabeth and the other boats and property of the joint stock.<sup>143</sup> About mid-summer, Evelin returned to Kent and took possession of all the partnership property. Claiborne's brother-in-law, John Butler, and Mrs. Gertrude James, with whom he had left a power of attorney as to his  $\frac{1}{6}$  of the joint stock, submitted without question. Evelin now "ordered and directed" the servants concerning their labors. He let some go free, others buy their time, and took ten of them, four of whom were carpenters, to Maryland to work on a manor, called Evelinton, at Piney Point on the Potomac, which had been granted him by Calvert.<sup>144</sup> He told one of the Kent settlers, that he intended to settle in Maryland<sup>145</sup>

<sup>140</sup> 5 Md. Arch. Coun. 181, 195, 215. Claiborne said he brought over witnesses to England with him.

<sup>141</sup> 5 Md. Arch. Coun. 182, 195, 201, 215, 230, 237.

<sup>142</sup> 5 Md. Arch. Coun. 216.

<sup>143</sup> 5 Md. Arch. Coun. 211, 216, 227.

<sup>144</sup> 5 Md. Arch. Coun. 182, 195, 202, 207, 211, 216.

<sup>145</sup> It is noteworthy that the Kentish men always speak of the Western Shore as Maryland.

and that it would be better to live there than in Kent. Evelin also took with him many trees from the plantation garden and some 800 or 900 pounds of truck, as well as two frames of windmills. Another large portion of the truck, he disposed of to the inhabitants and freemen of the island and still another part was sent to Virginia, several trips being made to take the goods away.<sup>146</sup> It is true we have not a full defence of Evelin, but from what evidence we possess, Claiborne seems to be right in saying that, because of Evelin's conduct, the islands became "void and waste." The case is still stronger, if it be true, that the freemen on Kent Island would have been bound together to have bought the estate, with the 36 servants on it.<sup>147</sup>

Relations between Calvert and Evelin grew closer. The former bought cloth from the latter, with which he purchased corn from the Susquehannoughs, though the plantation on Kent Island was in need of corn.<sup>148</sup>

#### GROWTH OF ST. MARY'S

During this time, we have little information as to the events at St. Mary's. Five Jesuits were laboring to learn the Indian languages and preaching to the white settlers. Impeded by illness, of which two of their number died in 1638, and not allowed by the rulers of the province to dwell among the aborigines, because of their hostile disposition,<sup>149</sup> their work was chiefly among the settlers. Many were induced to accept the Roman Catholic faith,

<sup>146</sup> 5 Md. Arch. Coun. 184, 196, 202, 208, 212, 217.

<sup>147</sup> Mountjoy Evelin with some truck was left with the "King of Patomeck" to learn the language. 5 Md. Arch. Coun. 183. Brown's Genesis 888. He was Geo. Evelin's son. Robert Evelin, George's father, was in the Va. Company.

<sup>148</sup> 5 Md. Arch. Coun. 184, 190, 217. This shows that the Calvert party were not yet raising enough grain for their needs.

<sup>149</sup> They write that they slew a trader and conspired against the whole colony. The early priests were Andrew White, first superior, John Altham or Gravener, who preached at Kent Island, and died at St. Mary's Nov. 5, 1640, Philip Fisher, superior 1637 to 1640, John Brock, or Morgan, superior in 1640 and died in 1641, and Roger Rigby who died in 1646. (7 Fund Pubs. 110 ff.)

among them the Jesuits' four indentured servants, bought in Virginia, and their five hired servants. Some of the conversions, which were most remarkable, are reported in detail and even miracles were hinted at.<sup>150</sup> A number of indentured servants who were Catholics were bought in Virginia and were brought to St. Mary's through charity of the more zealous Roman Catholics. Several of the chief men were "formed to piety by spiritual exercise" and the attendance on the sacraments was large. Catechetical lectures and sermons were preached, the sick and dying were cared for. Father White brought in one Francisco, a mulatto, in 1635, and took up land for him as a servant.<sup>151</sup> This is the first slave owned in the province and, though a few others are recorded as brought in, for example, negro Phillis in 1648,<sup>152</sup> there were few negroes in Maryland before the beginning of the 18th century. In England, Baltimore was not idle. On December 22, 1635, he asked the

<sup>150</sup> 7 Md. Hist. Soc., Fund Pubs. 55 ff.

<sup>151</sup> 2 Bozman, 571. He speaks of this as "an incident apparently trivial; but, being connected with an awful misfortune which the State of Maryland seems to be destined to experience at some future day, demands some notice." John Knowles, an assistant in the mission, died of yellow fever Sept. 24, 1637. Thomas Gervase was temporal coadjutor till 1640; was he Thomas Copley? (7 Fund Pubs. 126).

Thomas Copley arrived in the province on Aug. 8, 1637. He was a priest but engaged in business and conducted the secular affairs of the mission. According to his claims, White and Altham brought in 28 servants in 1634, who were entitled to 6000 acres, and he brought in 19 for whom and himself he claimed 4000 acres (Streeter, 9 Fund Pubs. 99; Neill, *Founders*, 92, 183). In December, 1634, he petitioned the King of England, where he was tarrying in the settlement of his father's estate, asking that he may have a warrant of protection as a "recusant." He styles himself "alien born," and his petition is granted. His grandfather, Sir Thomas, fled to France, where he was knighted by the King during Queen Elizabeth's reign, and Copley was probably born in that kingdom. With him, in 1637, came to Maryland Father Ferdinand Pulton and lay brother Walter Morley. (18 Fund Pubs. 200 states that Copley took up 285,000 acres, 8000 of which was for the Jesuits, including the manors of St. Inigoes, 2000 acres; St. George's Island, 1000 acres; town land near St. Mary's, 400 acres; and Cedar Point Neck. Some of this land is still in possession of the Jesuit order.)

<sup>152</sup> 3 Md. Arch. Coun. 40.

King to restore Harvey and bring the popular Virginian leaders to Europe. In March, 1637, he petitions that he be made Governor of Virginia with a salary of £2000, and in May he requests that his interests be duly guarded, if a new Virginia Company be formed.<sup>153</sup> On August 8, 1636, he issued new conditions of plantation which continued until 1642. The rent was changed so that it could be paid not only in money, but also in wheat,<sup>154</sup> and the grant to the first adventurers was confirmed, except that the amount given to the man bringing five men in 1633 was doubled and made 2000 acres. The same amount was granted to an adventurer, who brought in 10 men in 1634 and 1635. A grant of any multiple of 1000 acres is erected into a manor, to be called by such names as the grantee desires, and its privileges are defined, as the holding a court leet and a court baron. The quit-rents required by these conditions of plantation were exacted not only from the settlers in St. Mary's, but also from those of Kent Island in 1640, after the conquest.<sup>155</sup> In addition to these plantation grants, Cecilius directed his brother to grant 10 acres in "the town and fields of St. Mary's," for the first adventurers for every person they brought overland,<sup>156</sup> and five acres to later adventurers for persons brought over before August 30, 1638.

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<sup>153</sup> 3 Md. Arch. Coun. 41-44.

<sup>154</sup> 3 Md. Arch. Coun. 47, 99. 400 pounds of wheat for the man who brought in 5 men in 1633, 600 pounds for the man who brought in 10 men in 1634, or 1635, 10 pounds per 50 acres for lesser grants. Forms are sent over to be followed in such grants.

<sup>155</sup> 3 Md. Arch. Coun. 95. It was graciously decreed that the past rents should only be collected there when they had not been paid to Claiborne.

<sup>156</sup> 3 Md. Arch. Coun. 48. Among the titles of the acts passed in 1638, is one for "baronies." This has been interpreted as a step toward introducing the feudal system, but 2 Bozman, 67, 580, points out that barony in Ireland had the same meaning as hundred in England as an area of local government, and suggested that this may have been the meaning here. Kilty, Landholders Assistant, p. 93, says no barony was erected in Maryland.

## THE GOVERNOR'S NEW COMMISSION

A little later a new commission as Governor and the first one extant, was sent Leonard, and dated April, 1637. Under this commission, the province was governed for five years. He was made "Lieutenant-General, Admiral, Chief Captain, and Commander," and given "absolute authority above and in all matters of warfare, by sea and land, to execute and administer the same to the resistance of the enemy or suppression of mutinies and insolences."<sup>157</sup> These provisions suggest that Baltimore issued the new commission with special intent to have it used against the Kent Islanders and this idea is further conveyed by the command that all inhabitants in the province recognize Leonard as their ruler, under pain of such punishment, "as such a high contempt shall deserve." He is also made "Chancellor, Chief Justice and Chief Magistrate" and directed to appoint lesser judicial officers and to summon an assembly of the freemen or their deputies to be held at St. Mary's on January 25 next. At this assembly, Leonard Calvert is to state that Baltimore disassents to all laws hitherto made by them and to show the draft of "laws and ordinances for the good government" of Maryland, which should be sent from England by the Proprietary, with his assent to their enactment. If approved by the assembly, the laws may at once be proclaimed. Authority was also given the Governor to dissolve the assembly and summon and dissolve other ones, "to propound and prepare other wholesome laws" to be transmitted to Baltimore for approval.<sup>158</sup> It may take time to call an assembly and consult the freemen, and so in emergencies Calvert may issue "ordinances, edicts, and proclamations, with reasonable pains and penalties," not extending to taking

<sup>157</sup> 3 Md. Arch. Coun. 49 ff and 115.

<sup>158</sup> This seems to imply that Baltimore was less strenuous in his insistence on his right to the initiative, than has been generally supposed.

"life, members, freeholds, goods or chattels." Such ordinances, which should be in force until the Proprietary or Governor repeal them, do not seem to have been issued. The commission also authorizes Calvert to establish ports, markets and fairs, and to pardon, in whole or in part, penalties and forfeitures for all offences but high treason, to keep the great seal and affix it to public documents, and to make grants of land. As chief judge, he may determine criminal cases, as fully as the Proprietary, except that he may not deprive any one of life or limb. He should decide civil cases according to the laws of the province or the laws of England. To act as Council with the Governor, Jerome Hawley, Thomas Cornwallis, and John Lewger were appointed, and the last named was also made "Secretary and Keeper of the Acts and Proceedings of our Lieutenant and Council," and of the land records, as well as collector of rents and customs. Three of the Council, of whom the Governor must be one, are directed to sit on all cases involving life, member, or freehold. As it may happen that the Governor may die or leave the province, he is authorized to name a successor in either event and, if in such case he fail to do so, the majority of the Council have the same power. The judicial organization of St. Mary's County was completed by the appointment, in January, 1637-8, of James Baldridge as sheriff and of John Lewger as conservator or justice of the peace. He was also made "commissioner in causes testamentary" and probate judge.<sup>159</sup> Lewger was an old college mate of Baltimore at Trinity College, Oxford, where he took the degree of Bachelor of Arts in 1619, at the age of 17, and that of

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<sup>159</sup> 3 Md. Arch. Cour. 61, 73. He appointed Robert Perry, or Percy, deputy on April 17, 1638. 2 Bozman, 42, calls attention to the fact that Charles I's proclamation of April 30, 1637, against disorderly transplanting his majesty's subjects to the plantations within the parts of America would check the emigration of Roman Catholics as well as Puritans, as it insisted on conformity to the Church of England on the part of the emigrants, but adds that it seems only to have been enforced against Puritans.

Master of Arts in 1622. Studying divinity, he took the degree of Bachelor in that faculty in 1632 and received a handsome benefice in the county of Essex. He was a friend of William Chillingworth, an Anglican divine who had become a Roman Catholic, but who, after careful study, returned to the Church of England in 1634. Lewger<sup>159a</sup> had engaged in a like careful study "to satisfy himself or to obtain arguments with which to draw back his friend from the way of error into which he believed he had fallen," but became himself a Roman Catholic and resigned his benefice. As he was married, he could not be a priest, and his old college friend, Cecil Calvert, took him into his household and sent him to Maryland, where he arrived on November 28, 1637, with his wife Ann, son John, and several servants.<sup>159b</sup> To his care we owe it that more of the early records are not lost, for the books show that he preserved memoranda of the most important matters in his precise handwriting. He seems to have been a consistent friend of the Proprietary during the years he was in the province. He returned to England before the summer of 1649<sup>159c</sup> and then lived a retired life until his death of the plague in 1665, which he caught while comforting and sustaining those who were falling before that dread disease.

<sup>159a</sup> He was born in London in 1602. The name is also spelled Lewgar in Chillingworth's works. See 9 Fund Pubs. 218; Neill, *Terra Mariae*, 68; *Founders*, 72. His controversy with Chillingworth was continued for some time in letters and formal disputations.

<sup>159b</sup> The names of 19 servants of Lewger's in Maryland are given, but two at least were not brought over by Lewger. One was of the Kentish Islanders, taken by Evelyn and transferred by him to Lewger, and the other was brought in by Evelyn (9 Fund Pubs. 224). After his return to England, Lewger again became a member of Baltimore's family and is said to have written tracts supporting the royal cause and a religious work, trying to prove the invalidity of Protestant orders. His wife died just before his return to England. His son seems to have remained in Maryland (9 Fund Pubs. 274) and died 1669 (Neill, *Founders*, 72; I, Baldwin's Md. Wills, 49). (Baltimore had in 1667 a chaplain, an English recusant, now a Romish priest, who was a vicegerent of the province in Charles the First's time. Who was he? Neill, *Founders*, 72.)

<sup>159c</sup> 9 Fund Pubs. 275.

A month after the commission to Leonard Calvert was issued, Cecilius obtained from the King a letter to the Commissioners for foreign plantations and all other royal officers, reciting the grants of Avalon and Maryland to the Lords Baltimore and the transportation of ample colonies to each province.<sup>160</sup> There is now danger that some patents may pass the seals infringing these grants and Charles strictly commands that any applications for grants of land near either province be delayed, until Baltimore receive notice. The King also declares that he will not issue any *quo warranto* or other writ for the overthrowing of the charters of Avalon or Maryland.

#### ATTEMPTS TO SUBDUE KENT ISLAND

The favorable disposition of the monarch, the determination of Baltimore to press matters, the complaisance of Evelin, caused the Governor to take decisive steps. In November,<sup>160a</sup> Calvert wrote to the Kent Islanders, promising to grant an amnesty for past offences, if they would desist from their opposition and submit to Baltimore, and saying that he would appoint, as their commander, whomever they would choose of the inhabitants of the island. John Butler, Claiborne's brother-in-law, and Thomas Smith persuaded them to refuse, and so Evelin received the Proprietary appointment, which had not previously been given him, owing to his unpopularity with the Islanders. Calvert now took 20 musketeers from St. Mary's with Captain Cornwallis as their commander, and set sail towards Kent, intending to seize Butler and Smith, and reduce the rest into obedience. The weather was so foul on the Bay that, after remaining out a week, Calvert was forced to return unsuccessful.<sup>160b</sup> The commission issued

<sup>160</sup> 3 Md. Arch. Coun. 55.

<sup>160a</sup> L. Calvert to Baltimore, 28 Fund Pubs. 182, April 25, 1638.

<sup>160b</sup> Cornwallis (28 Fund Pubs. 169) seems not to have been in full harmony with Calvert and complains that Baltimore's service and the "pretended good" of Maryland would not permit him to go to England nor attend to his own affairs.

to Evelin<sup>161</sup> as commander of Kent confirmed the title he had borne by the grace of Cloberry & Co. for the previous year and a half, authorized him to hold court, determining civil cases, "not exceeding in damages or demands" £10, and criminal cases, not extending to "life or member" and cognizable by Quarter Sessions in England. He should also appoint necessary subordinate officers, especially 6 or more "able and sufficient men inhabitants of the island," with whom he should advise in all matters of importance.

About this time, Evelin came to Kent Island with his commission and summoned the freemen and inhabitants to come to the fort. There he had the Maryland charter read, to which the Islanders did not consent, but John Butler demanded, "Are you an agent for Cloberry and Co. or for the Marylanders?" "For both," answered Evelin, "for whereas I lately spoke against the patent of Maryland and said that Claiborne's commission was firm and good against it and that the Marylanders had nothing to do with the isle of Kent, now I am better informed, for I have seen the Governor of Maryland's patent. I was formerly mistaken and overseen, as I perceive now you are, but I now understand it better.<sup>162</sup> You should take heed what you do in opposing the Governor of Maryland, since it would be better to live under his government than that of Virginia. The Lord Baltimore has the patent and the island is his, and it would be more beneficial for you and better for the island to obey him, as you might carry your commodities and your tobacco and pipestaves into what country you would, which the Virginians can not. Claiborne's patent is of no effect, merely giving authority to trade in Nova Scotia and places near New England and not in the Bay of Virginia or Maryland. The Governor of Virginia has lately returned from England with absolute

<sup>161</sup> 3 Md. Arch. Coun. 59.

<sup>162</sup> 5 Md. Arch. Coun. 185, 196, 203, 209, 217. Zachary Mottershead read the patent. The depositions say this took place in November, but the commission was not then issued by Calvert.

authority from the King that Kent Island should be under Lord Baltimore and will assist the Governor of Maryland, if you will not yield up the island quietly, and I will not be the man that should withstand or deny it." Turning to one of his companions, he added, "Read my power of attorney from Cloberry and Murehead.<sup>163</sup>" Butler and the majority of the freemen here burst in with: "Capt. Evelin, what needs that? Nobody doth interrupt you in the merchant's business. You may do what you please, no man doubts your authority." To this Evelin made no reply, "nor could not justly so do," as one of the Islanders later testified.

No one protested against Evelin's peaceable enjoyment of the joint stock, save the minister's brave wife, Mrs. Gertrude James, who claimed Claiborne's sixth, by virtue of a deed from him, but this claim was successfully denied by Evelin.

On December 30, 1637, the same day that Evelin's commission was dated by Calvert, a cargo of goods was shipped for the isle of Kent upon the St. Thomas,<sup>164</sup> by Thomas Cornwallis, for himself and Jerome Hawley, both being councillors of the province. License was given Cornwallis to trade with the Indians and he paid one-tenth of the furs to the Proprietary for the privilege. Writs were issued to Evelin on this day to seize 11 planters on Kent Island and make them give security to answer suits brought against them by Cloberry & Co., and to levy on the cattle of four others, one of whom was Mrs. James, at the suit of the same firm.<sup>165</sup> A warrant was also issued for the arrest of Thomas Smith, John Butler and Edward Beckler for

<sup>163</sup> 5 Md. Arch. Coun. 185, 196 (Evelin also spoke to some of the people privately), 203 209, 218.

<sup>164</sup> 3 Md. Arch. Coun. 57. Cloth and axes. The venture seems not to have been very successful, as Cornwallis reported only 11 other skins on March 30, and returned much of the truck.

<sup>165</sup> 4 Md. Arch. Prov. Ct. 3, 4, 13, 29. Of course Evelin brought these suits. Wm. Cox, Robt. Philpott, Thomas Smith and Richard Thomson were among those against whom the suits were brought.

"sedition, piracy and murder." According to their statements, the islanders had little cause to love Evelin. In the preceding summer he had sent four hogsheads of meal to St. Mary's, when meal was very scarce.<sup>166</sup> Smith and James, friends of Claiborne, supplied the servants on the joint stock with corn, but Evelin brusquely said, "Get oysters and shift for yourselves, for I have no meat nor corn for you, nor can I tell where you can get it."<sup>167</sup> When they offered to take a boat and truck lying there and buy corn, he refused to permit them, but sold Calvert pieces of cloth for which corn might have been bartered. Various estimates place the value of the property lost by Cloberry & Co. through Evelin's conduct at £8000 or £10,000.<sup>168</sup>

#### THE NEW YEAR AND THE ASSEMBLY

In January, Leonard Calvert journeyed to Jamestown and there saw Richard Kemp, Secretary of that province, who was then much worried by rumors that Virginia would be given to a new trading company.<sup>168a</sup> This grant he felt would give Baltimore also "all the opposition that malice can give." Calvert's visit seems to have been partly in order to confer as to measures to oppose this company and to procure cattle, hogs, hens, sheep, and negroes for the Proprietary plantation at St. Mary's, concerning which desire Baltimore had written Kemp on August 2. We have an interesting glimpse of the times in one of Kemp's excuses for not sending cattle before Christmas, that "in likelihood, before they could have been delivered, they would all have perished for want of fodder, which is very rare in Virginia & I believe not yet known in Maryland." Calvert's visit was broken off by an "Indian flam," that people had been killed by the aborigines

<sup>166</sup> 5 Md. Arch. Coun. 186, 191.

<sup>167</sup> 5 Md. Arch. Coun. 186, 191, 210, 218.

<sup>168</sup> 5 Md. Arch. Coun. 189, 219, 237.

<sup>168a</sup> 28 Fund Pubs. 149. Kemp to Baltimore.

in Maryland, which caused him to hasten back.<sup>168b</sup> Kemp, it may be added, was in regular communication with Baltimore to frustrate this plan for a Virginia company, and wrote in the next month,<sup>168c</sup> inclosing "material writings extracted out of the records, affirming the slavery endured by the people there under the tyranny of the Company."

The time approached for the meeting of the General Assembly "of all the freemen," and, on the same day that Evelin received his commission, he was summoned to make his "personal repair to the Fort of St. Mary's on January 25, then and there to consult and advise of the affairs of this Province."<sup>169</sup> He should also proclaim the Assembly on Kent Island, within six days of receiving the summons, and "endeavor to persuade such and so many of the said freemen, as you shall think fit, to attend and to give free power and liberty to all the rest of the said freemen, either to be present at the said assembly, if they so please;" or otherwise to choose as many burgesses as as they wish. These should bring record of the vote with them. It is unknown what election was held on Kent Island, but, on the appointed day, Evelin came and with him Mr. Robert Philpott,<sup>170</sup> who exhibited his proxy for the freemen. He is already called "one of the Council of the Isle of Kent," but his commission from Calvert is dated on February 9. The others present at the opening of this second General Assembly of Maryland were all from St. Mary's. Cornwallis, Robert Wintour, and Lewger were present as Councillors and sat with the other freemen, the Governor, or Lieutenant-General, presiding

<sup>168b</sup> 23 Fund Pubs. 156.

<sup>168c</sup> 28 Fund Pubs. 155.

<sup>169</sup> The record says the summons was issued Jan. 30; this must mean Dec. 30. 1 Md. Arch. Ass. 1. The writ of summons for St. Mary's is not extant but it summoned freemen by name apparently. 1 Md. Arch. Ass. 4; 9 Fund Pubs.; Streeter's First Assembly.

<sup>170</sup> One of those whose cattle were attached, *supra*. Cox's cattle were also attached. 28 Fund Pubs. 193, Calvert says Philpott was one of the first that came in and deserves well.

over the whole. During the sessions of this Assembly, 64 different persons were present and 26 more freemen are mentioned, who did not appear. At some time previous to this, the country had been divided into hundreds, each with its high constable,<sup>171</sup> and there seems to have been three such divisions at this time, St. Mary's, Mattapanient and St. George's. Representatives of all these were present and of the 29 men who appeared at the opening of the Assembly on the first day,<sup>172</sup> 12 are described as gentlemen, 13 as planters, 2 as officers of the law, and 1 as a carpenter. Counting proxies, 31 freemen were present from St. Mary's, while two came later; 8 from Mattapanient, and 15 from St. George's, while one came later. A number are mentioned during the session without naming their hundreds. Proxies, however, paid no regard to hundred lines, but one man might hold proxies from all three hundreds. The daily attendance<sup>173</sup> fluctuated from 30 to 10. Thirty proxies were shown on the first day and seven men are recorded as absent without proxies. Calvert held 5 proxies, the largest number from the Western Shore. Men who were absent without proxies and those who were tardy were liable to "amercement," though excuses were often allowed. A curious instance of this is the case of the three Jesuits, Copley, White and Altham; on the first day they sent a proxy and pleaded sickness, and on the second day they were excused from "giving

<sup>171</sup> On March 31, Robert Wintour was made justice of the peace for St. George's and authorized to appoint his constable. 3 Md. Arch. Coun. 71. Robert Vaughan was made high constable of St. George's hundred when it was erected on the west side of St. George's River, on Jan. 5, 1637-8. In addition to ordinary constabulary duties he must see to it that no arms come into the Indians' hands. Mattapanient is also known as Mattapany.

<sup>172</sup> A 30th man, a carpenter, came later. 1 Md. Arch. Ass. 2-3. Streeter, 9 Fund Pubs. gives brief biographies of all the members of this assembly.

<sup>173</sup> 1 Md. Arch. Ass. 2. Of those absent all were planters save the Jesuits, a carpenter, a cooper, and a brickmaker. The latter is a proof that bricks were early made in the province. We must remember that indentured servants, doubtless the majority of the inhabitants, were not summoned.

voices in this Assembly.”<sup>174</sup> Others were excused for absence from the province or because they could not cross St. George’s River. We also find men who came to the Assembly, claimed a voice as freemen and satisfied with this privilege, at once gave a proxy and left the house.<sup>175</sup> A proxy could be revoked at any time by the presence of the man giving it.<sup>176</sup> So on the second day, John Langford, of the Isle of Kent, high constable for that island, so appointed at some unknown date, “who had given a voice in the choice of Robert Philpott”<sup>177</sup> as Burgess came and “desired to revoke his voice and be personally present in the Assembly” and was admitted. On the next day, Edmund Parry, planter, of Kent Island, did the same, but no other Eastern Shore representative appeared until after the reduction of the island.

On the first day, rules of procedure were adopted that the Governor should preserve order under pain of fine or imprisonment<sup>178</sup> as the house shall judge, that 10 should be a quorum, and that sessions should begin at 8 a. m. and 2 p. m. Motions must be reduced to writing and read by the Secretary. No one should rise to speak till the last speaker has sat down, nor should a man speak more than once at one reading of a bill, nor “refute the speech of any other with any uncivil or contentious terms, nor shall name him but by some circumlocution.” The speaker must stand uncovered, and address the Governor, who shall determine who has the floor, if two rise at once.<sup>179</sup> On Friday, the second day of the session, the draft of laws transmitted by the Lord Proprietor was read through and

<sup>174</sup> 1 Md. Arch. Ass. 5, 7.

<sup>175</sup> 1 Md. Arch. Ass. 6.

<sup>176</sup> So might a proxy be transferred from one who formerly held it, but was now absent, to another. 1 Md. Arch. Ass. 4-II.

<sup>177</sup> 1 Md. Arch. Ass. 6-8. The confusion of dates is inextricable here, the election for burgesses in Kent was not held until February according to L. Calvert. 28 Fund Pubs. 185. Three burgesses, at least were elected from Kent Island.

<sup>178</sup> There was no prison. 1 Md. Arch. Ass. 4.

<sup>179</sup> Amercements were made in tobacco, already the colonial currency. 1 Md. Arch. Ass. 6-7.

the laws were severally debated. On the following Monday morning, it was proposed whether the laws formerly read should be read again or put to the vote at once. Cornwallis, who was not in full harmony with the Governor, with five others, casting in all 18 votes,<sup>180</sup> favored delay to a "more frequent house," while Calvert and six others, casting 33 votes, decided for an immediate vote.<sup>181</sup> When however, the question of the adoption of the laws was put, only Calvert and Lewger, casting 14 votes, were in the affirmative, and the other nine men cast their 37 votes in the negative. It was then asked, "By what laws shall the Province be governed," and some said, "We might do well to agree upon some laws till we can hear from England again." "We have no such power," Calvert maintained. "Then we must use the laws of England," asserted Cornwallis. "I acknowledge," Calvert returned "that my commission gives me power in civil cases to proceed by their laws and so in criminal cases likewise not extending to life or member, but in those latter I am limited to the laws of the Province. By the refusal to pass these laws, therefore, there can be no punishment inflicted on any enormous offenders." The Governor's commission was then produced and read and found to sustain Calvert's position. Cornwallis and his followers answered, nevertheless, "Such enormous offences could hardly be committed without mutiny and then could be punished by martial law." An adjournment for the midday meal put an end to the discussion, and when the Assembly came together in the afternoon, Calvert seems to have yielded, so that when some one proposed that they "consider of

<sup>180</sup> 1 Md. Arch. Ass. 8. Cornwallis 4 votes, H. Fleet 5 votes, R. Vaughan 4 votes, E. Fleet 2 votes, E. Parrie 1 vote (16 votes, yet the Proceedings give the total as 18).

<sup>181</sup> The records call Calvert the president. Wintour, the third member of the Council, was ill. 1 Md. Arch. Ass. 9. L. Calvert 8 votes, Evelin 6 votes, Lewger 6 votes, Greene 1 vote, Snow 4 votes, Rabnett 8 votes, Baldridge 2 votes (35 votes, yet the Proceedings make the total 33).

some laws to be sent to the Lord Proprietor," the Governor advised that a committee be chosen "to prepare the draft of them and then the house might meet for confirming of them and in the meantime every one might follow their other occasions."<sup>182</sup> This suggestion was approved, and it was determined to choose a committee of five. Of the 16 present, nine were nominated as well as Captain Wintour who was absent, and those elected were Calvert, Cornwallis, Wintour, Evelin and Justinian Snow.<sup>183</sup>

The Assembly had decided on that morning that, after the writs were issued for summoning the Assembly, no man having a right to repair to the Assembly, whether present at its deliberation or represented by a proxy, might be arrested until a convenient time for his return home had passed after the dissolution of the Assembly. This privilege of Parliament would be awkward during the recess, especially as a court was to be held on February 3, and so was suspended until after that date.<sup>184</sup>

While the committee is deliberating, the first recorded inquest in the province takes place on January 31, on the body of John Bryant, of Mattapanient, planter, on whom a tree fell, crushing him beneath it. The coroner's jury declared the tree forfeited to the Proprietary as a deodand.<sup>185</sup>

On the appointed day the Assembly again met<sup>186</sup> and the committee reported that they recommended that the Pro-

<sup>182</sup> 1 Md. Arch. Ass. 10. The matter of proxies is perplexing, especially as to the Kent Islanders. Evidently these were not voted by any of the representatives on this day. Copley maintained that his overseer, Lewis, had more proxies than any one else. This is incorrect. 28 Fund Pubs. 158.

<sup>183</sup> Apparently Cornwallis has the unanimous vote 54, Evelin 48, Wintour 45, Calvert only 38, and Snow 31. Lewger with 22 was defeated, as were Greene 17, Jas. Baldridge 8, Henry Fleet 8, and Clerke 7. Wintour was authorized to name another in his stead, if his sickness prevented his serving.

<sup>184</sup> 1 Md. Arch. Ass. 8-10. No record of this court is found.

<sup>185</sup> 4 Md. Arch. Prov. Ct. 9.

<sup>186</sup> 1 Md. Arch. Ass. 11. Quite a good number attended, 30 in all. They voted to have three readings of bills on three successive days.

prietary's draft of laws be read and voted on again, as there had been much misunderstanding about them among the freemen. This recommendation was adopted by a vote of 48 to 21. Then the Proprietary's draft and 20 bills prepared by the committee were read and the house determined by a vote of 37 to 31 to have these laws voted on separately. Shortly after the afternoon session began, the Governor declared, "I thought it fitting to adjourn the house for a longer time, till the laws which they would propound to the Lord Proprietor were made ready, which some would take a care of and in the meantime the company might attend to their other businesses."<sup>187</sup> Probably a disinclination to the rejection of his brother's laws and a desire to push on the expedition for the reduction of Kent Island impelled him to this. Cornwallis, who seems to have been rather indisposed to attack the islanders, answered, "We could not spend our time in any business better than this for the country's good," and another planter added, "Why should the assembly be adjourned. We are willing to leave our other business to attend to it." Calvert, however, resolutely replied, "I will be accountable to no man for my adjourning of the Assembly."<sup>188</sup>

Before the adjournment, however, Cornwallis secured the election of himself, Evelin and Calvert as a committee of three to go on with the laws.<sup>189</sup>

Calvert prorogued the Assembly<sup>190</sup> until the 26th of February, that he might have time for his expedition to Kent

<sup>187</sup> 1 Md. Arch. Ass. 12.

<sup>188</sup> Privilege of parliament was again suspended (1 Md. Arch. Ass. 12, 13, 14) at each prorogation. 2 Bozman, 52, has a long discussion as to the "warrants" from which this privilege exempted the freemen and concludes that the word was confined to civil process, and points out that a similar exemption from arrest for debt was allowed in Virginia and that in England no privilege availed against arrest for treason, felony or breach of the peace, though he admits that warrants usually refer to criminal process.

<sup>189</sup> Of the 62 votes cast, Cornwallis had 56, Calvert 46, Evelin 44, Lewger polled 31, Snow 5, Fleet 4.

<sup>190</sup> 1 Md. Arch. Ass. 13; 3 Arch. Coun. 64.

Island and appointed Lewger as a temporary president, in case he had not returned by that time. On the 26th, Lewger called the Assembly<sup>191</sup> together and prorogued it until March 5,<sup>192</sup> when it was again prorogued by him until March 13. On February 17, Calvert granted Thomas Games a license to trade with Dutch<sup>193</sup> or Indians, while another man, Robert Clerke, who was employed by Copley, one of the Jesuits, received a license<sup>193</sup> to trade with the Indians of the province for the benefit of his master, paying the usual tenth to the Proprietary.

#### THE CONQUEST OF KENT ISLAND

On February 17,<sup>194</sup> the names of Calvert, Hawley and Lewger<sup>195</sup> are signed to a proclamation, stating that the inhabitants of the Isle of Kent have committed "many piracies, mutinies, and contempts," and especially disobeyed warrants sent for arrest of alleged malefactors and debtors<sup>196</sup> and even rescued by open force some who had been taken prisoners. Worst of all they are conspiring with the Susquehannocks and other Indians against the province. The Governor now intends to sail with Cornwallis and a number of well armed freemen to reduce the inhabitants by martial law, and put to death any who obstinately refuse to submit. A court was also held

<sup>191</sup> Wintour was present and ten very undistinguished men. 1 Md. Arch. Ass. 13.

<sup>192</sup> On March 5, Lewger, Greene, Jas. Baldridge and eight others were present.

<sup>193</sup> This man, Robert Clerke, was not an indentured servant, for he sat in the assembly. 3 Md. Arch. Coun. 63; 4 Md. Arch. Prov. Ct. 34. A similar grant was made to Capt. Fleet on Feb. 28, and to Hawley on July 9. 3 Md. Arch. Coun. 67, 73 to 78. Games received a similar license in 1640.

<sup>194</sup> 3 Md. Arch. Coun. 63, 91.

<sup>195</sup> Query. Was Hawley really present to sign it? He never appears in the legislature and may have been in Virginia. 28 Fund Pubs. 183.

<sup>196</sup> On Feb. 9, a writ against 3 Kentishmen for debt was issued to the sheriff at the suit of Cloberry & Co., i. e. through Evelin. 4 Md. Arch. Prov. Ct. 13.

on that day<sup>197</sup> before Calvert, Wintour, and Lewger, at which the sheriff returned 24 freemen as the grand inquest, and six witnesses testified.<sup>198</sup> As the result the grand jury returned true bills against Claiborne for instigating Lt. Warren to make the attack on Cornwallis's vessel in which attack Ashmore was killed. Shortly after this, Calvert started for the Eastern Shore.<sup>199</sup> Evelin seems to have been heartily with Calvert and went on this expedition, in which 30 choice musketeers were engaged, and is said to have encouraged men to go to Kent, by saying that the pillage would be worth more than the loss of their time and even to have paid one for his share of the plunder.<sup>200</sup>

The sheriff of Kent was directed by several writs to seize the pipestaves and other goods and chattels belonging to Claiborne or to Cloberry and Murehead on Kent Island, inasmuch as "they<sup>201</sup> have jointly usurped our said Isle" and defended it against our just title and trade with the Indians contrary to our "royal right," and committed waste upon our land felling "divers of our best timber for making pipe staves."<sup>202</sup>

The expedition arrived at Kent Island<sup>203</sup> a little before sunrise. Going to "Claiborne's house, seated within a small fort of palisadoes, one of the party, who knew the place, found entrance & unbarred the gate towards the

<sup>197</sup> 3 Md. Arch. Coun. 64; 4 Md. Arch. Prov. Ct. 14, 21; 5 Md. Arch. Coun. 169.

<sup>198</sup> Cornwallis, Fenwick, Cotton, E: Fleete, Newill, and Lewis.

<sup>199</sup> The records show that Cornwallis and Calvert were at St. Mary's on Feb. 25 and 26. Could they have waited until then? Yet neither were in the assembly on the latter day. 4 Md. Arch. Prov. Ct. 15.

<sup>200</sup> 5 Md. Arch. Coun. 238.

<sup>201</sup> 5 Md. Arch. Coun. 170 to 173; 3 Md. Arch. Coun. 70. They were summoned to appear at St. Mary's County Court before Feb. 1, 1639.

<sup>202</sup> The illicit Indian trade was one of Calvert's chief troubles. Virginians who had carried on this trade freely for over 20 years were not willing to give it up and William Braithwait was commissioned to seize any vessels trading with the Indians without license and any furs, etc., so traded. 3 Md. Arch. Coun. 62.

<sup>203</sup> 5 Md. Arch. Coun. 186, 191, 209, 218.

sea, by which the St. Mary's men arrived within the fort, without being noticed." Butler and Smith were not there, but at their plantations, and all persons in the fort were brought to Calvert, to prevent them giving untimely notice of the arrival of the expedition. Taking their prisoners with him, Calvert marched some five miles to Butler's dwelling, called the "Great Thicket," and sent his pinnace to Craford. About half a mile from the dwelling, he halted and sent the ensign, Robert Clerke, with ten musketeers, to tell Butler of his arrival and command him to come at once to Craford, two miles away. Clerke returned with Butler, before Calvert moved, and then Sergeant Robert Vaughan, with six musketeers, was sent to Thomas Smith's house, called Beaver Neck, on the opposite side of the creek from Butler's. Calvert then marched forward with Baltimore's "ensign displayed,"<sup>204</sup> to Craford, whither Vaughan brought Smith. Placing these two prisoners on the pinnace, Calvert proclaimed a general pardon for all other inhabitants on the island, if they should submit within four and twenty hours. "The whole Island came in," and Calvert received their submission, assuring them that Baltimore would always be ready "upon their deserts to condescend to any thing for their goods."

Butler, Smith and most of the soldiers were sent away to St. Mary's, that the sheriff might keep the prisoners in custody there. While awaiting the pinnace's return, Calvert held court and heard "diverse causes between the inhabitants." After this, he assembled them to choose their burgesses for the General Assembly, told the islanders that they must receive patents from the Proprietary for their lands and promised to come over again in the summer with Lewger to survey and lay out the lands.

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<sup>204</sup> This account is taken from L. Calvert's letter to Baltimore, dated April 25, 1638, and here is the first mention of Maryland's flag. 28 Fund Pubs. 183 ff.

Calvert estimated that there were 120 men able to bear arms, besides women and children on the island.<sup>205</sup>

He commissioned<sup>205a</sup> Philpott, William Coxe and Thomas Allen, conservators of the peace on the island, authorizing them to hold courts leet, Philpott and at least one other being present, and to determine civil causes not exceeding in damages or demands 12 hundredweight of tobacco, and criminal cases not extending to the loss of life or member. In greater cases Philpott was authorized to issue warrants of arrest of person or attachment of goods to John Langford,<sup>205b</sup> who was appointed sheriff at the same time, and the case was then to be brought before the court at St. Mary's.

It seems that a second expedition with some 50 men was made some time later, as a result of which two voyages all the estate of Cloberry & Co. was confiscated and the indentured servants carried away. Claiborne's own property was also confiscated, consisting of tobacco,<sup>206</sup> nearly 200 cattle, 16 indentured servants, tools and other goods, whose value was estimated by one observer as £7000 at least. Richard Ingle, of whom we shall hear more, now appeared on the scene, contracted with Leonard Calvert to transport the confiscated pipestaves to England, and took from the island 40,000 staves in the Richard and Anne, for which suit was afterwards brought by Cloberry and his associates.<sup>207</sup>

<sup>205</sup> Cornwallis said the expedition was much easier than had been anticipated. 28 Fund Pubs. 170.

<sup>205a</sup> 3 Md. Arch. Coun. 62. The commissions were dated Feb. 9.

<sup>205b</sup> On the 8th, Langford was appointed administrator of a Kentish intestate. 4 Md. Arch. Prov. Ct. 12.

John Langford was Lord Baltimore's agent, who took to Windsor, on April 23, 1633, the first annual payment of two Indian arrecks, on which tenure the Province of Maryland was held. He published a "Just and clear Refutation of Babylon's Fall" in 1655. 28 Fund Pubs. 54.

<sup>206</sup> They alleged there were 70,000 lbs. tobacco.

<sup>207</sup> See records of Admiralty Court Misc. Books, 281-21. Ingle was 36 years old in 1645. By agreement, before going to Kent, with Lewger, who apparently acted as Baltimore's agent, Calvert had the

Early in March, Calvert sent Robert Vaughan, William Brainthwait and several others, taking<sup>208</sup> with them two small pieces of ordnance out of the Kent Island fort, to reduce still another trading post of Claiborne's, situated on Palmer's Island. This island lies at the mouth of the Susquehanna, was later known as Watson's Island and is now crossed by the Baltimore and Ohio Railroad. It first belonged to Edward Palmer, of Leamington, Gloucestershire, England, who died about 1625, and at his death he left the land to his descendants, and in the event of their extinction, to found a university called Academia Virginicensis et Oxoniensis. The contingent bequest was never made effective.

By grant from the King of the Susquehannoughs, Claiborne claimed title to Palmer's Island,<sup>209</sup> and in the spring of 1637 sent William Jeanes, one of his servants, to establish a settlement there, believing it above the 40 degrees parallel. Thither came Calvert in June, "displanted" the fort and houses and carried away the men, cattle and hogs<sup>210</sup> to St. Mary's, thus damaging Claiborne to the amount of £1000, as it was claimed. The inventory of articles seized shows a trading house well supplied for Indian wants and four indentured servants. Five or six little books and a "great book of Mr. Perkins" were also seized.

#### PROCEEDINGS AGAINST SMITH AND CLAIBORNE

Before this last confiscation, however, the Assembly was reconvened<sup>211</sup> on March 12 and read the 20 bills for the

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confiscated windmill, housing, garden and goods, and the pipestaves at 40s. a thousand, and should defray all the charges of the expedition, and Baltimore should have the cattle. 28 Fund Pubs. 198.

<sup>208</sup> Robert Vaughan, Renauld and Edward Fleet were of the party. They returned before March 12.

<sup>209</sup> 5 Md. Arch. Coun. 188, 219, 231, 234. 28 Fund Pubs. 183. L. Calvert thinks Smith was prime mover in settling Palmer's Island.

<sup>210</sup> 8 cows, 60 hogs. 5 Md. Arch. Coun. 172; 3 Arch. Coun. 76; 28 Fund Pubs. 187.

<sup>211</sup> 1 Md. Arch. Ass. 14.

second time. The next day, 14 bills, whose titles are given in the records, were read for the first time.<sup>212</sup> They had a second reading on the 14th and three others were read for the first time. We discover that the freemen were firm that no custom of permitting "the resting of servants on Saturdays in the afternoon" was to be allowed.<sup>212a</sup> Four more bills were later introduced by title and Bacon's Laws note the titles of 42, which were passed on their third reading and signed by the Governor and members before the session was dissolved.<sup>213</sup> Only one of these is extant,<sup>213a</sup> the act for the attainder of Claiborne, which recites that he has been indicted by the grand jury for instigating Warren's acts, but being out of the province, he cannot be tried "by any ordinary course of justice," consequently the freemen attaint him of piracy and murder and decree that he forfeit all his property to the Lord Proprietary.

We see proof that the Assembly claimed powers of a court of law by fining one man for striking another.<sup>214</sup> The proof of this, however, is the action of the Assembly on March 14, when 22 freemen sat.<sup>215</sup> We may imagine a clustering crowd of servants about the door when Thomas Smith was called to the bar to answer to an indictment for piracy.<sup>215a</sup> The charge was based on his seizing, near Palm-

<sup>212</sup> 1 Md. Arch. Ass. 23.

<sup>212a</sup> 2 Bozman, 66, says "that notwithstanding this declaration of the legislature the custom has to some measure, even with slaves, prevailed throughout the Province."

<sup>213</sup> Two more Kent Islanders, one of whom was Edward Beckler, afterwards executed for sedition on account of the Kent Island troubles, and both of whom are called "burgesses," came in before the session closed on March 24. On 19th, 2 men made Cornwallis their proxy and were denied. 1 Md. Arch. Ass. 22.

<sup>213a</sup> 1 Md. Arch. Ass. 23.

<sup>214</sup> 1 Md. Arch. Ass. 19, 21.

<sup>215</sup> 3 coming in after the trial begun did not vote. 1 Md. Arch. Ass. 16. Of the 18, 6 had been the witnesses (all there were) before the grand jury, and 7 were members of that body. The one negative vote came from a member of the grand jury. Of the three late ones, one had been on the jury.

<sup>215a</sup> We do not know under what law he was convicted but the Assembly passed a bill confirming the sentence.

er's Island, in 1635, a pinnace from St. Mary's and taking it and its cargo of truck to Kent Island, whither he also carried as prisoners the men on board, John Tompkins and Robert Vaughan.<sup>215b</sup> Lewger acted as attorney for the province and produced two depositions. Smith pleaded not guilty, and said he could challenge none in the house that were to pass upon him. Vote was then taken and but one voice was for acquittal, while 18 answered guilty; Calvert then pronounced sentence of death by hanging and decreed that Smith's goods should be forfeited, save that his wife should have her dower. Smith now demanded benefit of clergy, but Calvert sternly answered there is no such privilege to one accused of piracy and benefit of clergy may not be demanded after judgment. Smith petitioned Baltimore for pardon, but doubtless the Proprietor left him to Leonard Calvert, as the latter wished, to do as he found Smith to deserve.<sup>215c</sup> We do not know when this sentence was carried into execution, but there seems to be no doubt that Smith and another Kent Islander, Edward Beckler, were put to death as "rebels." Cornwallis and six others now left the room and Lewger asks the other 16 to inquire into the deaths which occurred in the struggle on the Pocomoke. After hearing four witnesses the Assembly exonerated Cornwallis and his party as firing in self-defence and decided that Ratcliffe Warren and his party were "felons, pirates & murderers."<sup>216</sup>

Butler, rather strangely, was not tried.<sup>216a</sup> Calvert hoped, by "showing favour unto him, to make him a good member," and took him from the sheriff's custody into his own house. If he should show "a good inclination" to Baltimore's service, Calvert hoped to make him commander of Kent, for Philpott, Allen and Coxe were "very unable" for

<sup>215b</sup> 28 Fund Pubs. 187.

<sup>215c</sup> 28 Fund Pubs. 187. Op. cit. 171. Cornwallis asked for his pardon, out of mere charity towards his poor wife and children.

<sup>216</sup> 1 Md. Arch. Ass. 17.

<sup>216a</sup> 28 Fund Pubs. 186.

the charge, nor were better to be found on the island. If Butler continued stubborn in opposition, he should yet be punished. He seems to have become somewhat reconciled to the Proprietary Government, for, on May 27, Calvert commissions him Captain of the Kent Island militia and second only to the commander of the island.<sup>216b</sup>

So ended the session of the Assembly and so was Kent Island reduced to Calvert's control. Evelin<sup>216c</sup> remained in the province only a few weeks, during which time his name frequently appears on the records. On May 30, he conveyed to his brother Robert three servants in satisfaction of a debt owed the latter by Cloberry & Co. He also conveyed to Robert Evelin his plantation of Piney Point, containing 300 acres, and 50 acres more he lately bought from John Richardson. He returned in the next year for a short space and then vanished from the history of the province, having resided there only about one and one-half years, but having played a most important part in the extension of the Proprietary's authority over the Eastern Shore.

#### CLAIBORNE'S PETITION IN ENGLAND

In the early part of 1638, Claiborne suffered an even greater loss in England. On February 26,<sup>217</sup> he filed a petition, for himself and partners, asking the King for a speedy examination of his wrongs, and for a confirmation, under the great seal, of the grant of Kent Island, to send with a ship, which was now ready to depart. He recited his misfortunes at Baltimore's hands down to the expedition in November and offered to pay £50 per annum for Kent Island and the same sum "for the plantation in

<sup>216b</sup> 3 Md. Arch. Coun. 75.

<sup>216c</sup> 4 Md. Arch. Prov. Ct. 34. He calls himself of Evelinton in St. Mary's Co. The debt was for 1400 lbs. of tobacco and 52 lbs. beaver. His son had remained in the province for some years, and married Obedience Robins. His daughter, Rebecca, married Hon. Daniel Parke. Brown Genesis 888. 28 Fund Pubs. 204.

<sup>217</sup> 3 Md. Arch. Coun. 67.

the Susquehannoughs country," to have 12 leagues of land on each side from the mouth of the Susquehanna River, southward down the Chesapeake to the sea and northward to the head of the river and the Grand Lake of Canada. We can well see that this patent would have ruined Baltimore's patent, but the vague phrasing of the request was, doubtless, meant to confuse the royal authorities, with their meagre geographical knowledge. The application seems to have met with favorable consideration and is referred to the first council day after Easter. Baltimore at once answered Claiborne's petition and asked that the order of July 3, 1633, be confirmed, leaving Baltimore "to the right of his patent and the other party to the course of law."<sup>218</sup> As to the injuries alleged by Claiborne to have been done him in Maryland, let these be examined into in America by the Governor and Council of Virginia. On April 4, the Lords Commissioners for Plantations met,<sup>219</sup> a distinguished body of 11 men, presided over by the Archbishop of Canterbury. Claiborne and Baltimore with their counsel were also present, and the commissioners decided that Claiborne's license, under the Scotch signet only, was a license to trade with the Indians, where "the sole trade had not been formerly granted by his majesty to any other" and gave no title to plant or trade with Indians in Kent Island, or any other place within Baltimore's patent. No plantation or trade with Indians ought to be within those limits without Baltimore's license and no grant of any place within those limits should be made by the King to any one. As to the violences and wrongs of which Claiborne complains, the commissioners found no cause at all to relieve them, but left "both to the ordinary course of justice." So thorough a defeat, followed by news of the final reduction of Kent and Palmer's

<sup>218</sup> 3 Md. Arch. Coun. 68.

<sup>219</sup> 3 Md. Arch. Coun. 71. An interesting draft of a petition by Baltimore to the Lords, published 28 Fund Pubs. 221, may well date from this time.

Islands did not discourage Claiborne; but, on June 28, he wrote to Sir Edward Coke,<sup>220</sup> imploring his assistance and stating that the Earl of Stirling would join in any petition to the King. This petition resulted in a letter, under the royal signet, on July 14, from the King to Baltimore, stating that complaints from Cloberry and Murehead have come to him of the violation by Baltimore's agents of the royal orders concerning "Kentish Island" and the trade and plantation there. The King now refers the matter to the Commissioners for Plantations and enjoins Baltimore to permit the Kentishmen to be safe in their persons and goods, till the matter be decided. The island had been reduced nearly six months before this date, and no attention seems to have been paid in Maryland to the letter, but its issue showed clearly Claiborne's indomitable spirit.

#### THE CLAIMS OF CORNWALLIS AND THE JESUITS.

In May or June, Lord Baltimore received three important letters from his province. One from the Governor,<sup>221</sup> told of the reduction of Kent Island, complained that Hawley did not seem sufficiently loyal, and spoke of procuring for the Proprietary various products of the country, which the latter desired.<sup>222</sup> He tells his brother that Mr. Lewger is a "very serviceable & diligent man in his secretary's place in Maryland and a very faithful and able assistant to me,"<sup>223</sup> and that he will shortly adjust all accounts with Lewger as Baltimore's agent. The Assembly refused to pass the body of laws sent over by Lewger, in spite of Calvert's efforts, but he thinks that the laws passed "will appear to you to provide for your honor & profit, as much as those you sent us did." Calvert has had no

<sup>220</sup> 3 Md. Arch. Coun. 77. Coke had been present on April 4.

<sup>221</sup> 28 Fund Pubs. 183.

<sup>222</sup> He speaks of relations with the Indians as being most friendly.  
28 Fund Pubs. 192.

<sup>223</sup> 28 Fund Pubs. 179. Cornwallis speaks not quite so favorably of him.

time and little trust in Hawley's ability to induce the Virginia Legislature to pass a bill for the "securing of your right in the trade within your precincts." The letter was written from Virginia, where Calvert was for a short time, having left Lewger as Governor at St. Mary's.<sup>224</sup> A second visit to Virginia in June, when Cornwallis was left as Governor,<sup>225</sup> seems to have produced no greater result, but after word came of the decree of the Commissioners of Plantations, the Governor and Council of Virginia issued a proclamation, dated October 4, forbidding any inhabitant of Virginia to "use, exercise or entertain any trade or commerce for any kind of commodity whatsoever with any of the Indians or salvages" in Maryland, or, indeed, to "resort" unto their "habitations, without license" from Lord Baltimore.<sup>226</sup>

This matter of Indian trade was most important. The Assembly left it entirely to the Proprietary,<sup>227</sup> and Calvert exhorts his brother to let Cornwallis have "3 twenty pound shares in it yearly, so long as he is a member of your Colony," to give "him encouragement for the many services he has done you."<sup>228</sup> There is danger of spoiling the trade by letting too many be sharers in it and Calvert entreats his brother to let no one but himself and Cornwallis join with the Proprietary therein. Baltimore granted this petition.<sup>229</sup> Cornwallis writes, asking the same favor,<sup>230</sup> which Calvert recommended for him. Baltimore knew he "came not hither to plant tobacco," and, if he can obtain only

<sup>224</sup> Lewger's<sup>s</sup> commission is dated April 1 (3 Md. Arch. Coun. 71). The letter is dated from Virginia, April 25.

<sup>225</sup> Commission dated May 27 (3 Md. Arch. Coun. 74).

<sup>226</sup> 3 Md. Arch. Coun. 80.

<sup>227</sup> Cornwallis says the law as to trade will give him power to ratify conditions with the first adventurers (28 Fund Pubs. 173).

<sup>228</sup> Calvert (28 Fund Pubs. 190) writes with magnanimity, "though it hath been his fortune and mine to have some differences formerly, yet, in many things I have had his faithful assistance for your service &, in nothing more, than in the expedition to Kent this last winter." Cornwallis commanded the soldiers in that expedition.

<sup>229</sup> 28 Fund Pubs. 197.

<sup>230</sup> 28 Fund Pubs. 170.

"what I must fetch out of the ground by planting this stinking weed of America, I must desert the place and business, which I confess I shall be loath to do, so cordial a lover am I of them both." He has rather exhausted his patrimony than made money hitherto<sup>231</sup> and has expended a "vast charge" for two years, in building a grist mill for the province. Furthermore, while "hitherto we live in cottages," Cornwallis is now "building a house, to put my head in, of sawn timber, framed, a story and half high, with a cellar, & chimnies of brick, to encourage others to follow my example." Of "common stocks" he will have no more and his refusal to join with others of the "first adventurers, in accepting the last conditions for the trade," has made him seem, but not truly, to be the "only supposed enemy" to Baltimore's profit. He assures Baltimore of Hawley's loyalty to him and shows by his words that he is aware there are rumors to the contrary. There is great bitterness in his remarks with reference to Clarendon. Cornwallis wrote of the act of attainder, "which comes for your Lordship's confirmation with many others among which, if there were none more unjust I should be as confident to see this same a happy commonwealth, as I am now of the contrary, if your Lordship be not more wary in confirming, than we have been wise in proposing." This shows that Cornwallis's opposition to Calvert and Lewger in the Assembly had been far from successful. Apparently, the religious laws are most distasteful to him and he hopes that no clause may be approved "that shall not first be thoroughly scanned and resolved by wise, learned, & religious divines to be no ways prejudicial to the immunities & privileges of that Church, which is the only true guide to eternal happiness."

The third letter, from Thomas Copley,<sup>232</sup> dealt chiefly with this same matter, viz., the position of the Roman

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<sup>231</sup> He speaks as though he had once possessed the monopoly of supplying the colonists with goods. <sup>232</sup> 28 Fund Publ. 157.

Catholic Church in the province, and particularly of its ecclesiastics. Baltimore endorsed on it, "Herein are demands of very extravagant privileges." Copley begins by assuring the Proprietary that the Jesuits had not opposed the passage of the laws, nor intermeddled in any way with the Assembly, since it was not fit that they should be there and their "proxies would not be admitted, in that manner as we could send them." Even Calvert and Lewger said that the laws sent over were "not fit for this colony," and a recent hasty glance over those that were passed, causes Copley to pen an indignant protest against them. Here began a struggle between the Proprietor and Jesuits which had important results in the province.<sup>233</sup> Copley first objects to the provision that "20 men be registered here, before any one can pretend to a manor," and says Greene told him that, if this became a law, he must desert the colony, as he could not present that number of men, and his lands were unsalable.<sup>234</sup> In a very tactless way, Copley insinuates that all Baltimore wishes from the province is the Indian trade, and proceeds to lecture him for hoping to draw a return from the province at an early date.

The great cause of complaint, however, is the treatment of the ecclesiastics of the church. There is no care "to promote the conversion of the Indians," to provide or show any favor to ecclesiastical persons, or "to preserve for the church the immunity & privileges which she enjoys everywhere else." Lewger seems to say that "she has no privileges *jure divino*," but they are due, only when "the commonwealths, in which the church is, grant them." He holds that they may proceed with ecclesiastical persons as with others, and has even granted warrants against

<sup>233</sup> There is an excellent paper on this subject by Prof. Alfred Pearce Dennis in Proc. Am. Hist. Ass. 1900, vol. I, p. 107.

<sup>234</sup> He says that many question the legality of the passage of the acts and complain that Calvert, Lewger and "their instruments" did what they would through their proxies.

one of the Jesuits' servants. It is true the sheriff, Baldridge, a Protestant, desired Copley to send the man down, but added, in Calvert's presence, that he "must otherwise fetch him down." Worst of all, Lewger already demands 1500 pounds of tobacco of the Jesuits for building a fort, though they should be freed from taxation, as they render their religious services gratis.

The Legislature has apparently passed a law<sup>235</sup> that men must relinquish their manor lands and cast lots for a choice. This may make the Jesuits lose their lands or pay quit-rent as freeholders, which they cannot do, having no corn. Even if they have the best lot and choose Mattapan, they must lose Gerard's Manor, bought at a "dear rate," and there will be no knowing when Assemblies shall again alter private rights.

Other laws provide that they must have 15 freemen trained as soldiers on their manor, must plant two acres of corn for every head, and must lose the trade in beaver and corn, as well as lay out glebe lands in their manor, where they must be pastors (which is not their work) or employ others for this purpose. Forfeiture of land of nuns to the next of kin, an order for the payment of debts, and prohibition to take land from Indian kings, also are objected to, as is the act for enormous crimes, punishing the exercise of "jurisdiction & authority without lawful power and commission derived from the Lord Proprietary." This law would "hang any Catholic bishop that should come hither and also any priest, if the exercise of his functions be interpreted jurisdiction or authority." Having stated his objections to the laws, Copley warns Baltimore from assenting to them, in rather superior tones, and then asks for a "private order that we may, while the Government is Catholic, enjoy these privileges:" 1. "That the church and our houses may be sanctuary;" 2. That the

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<sup>235</sup> We really get our chief knowledge of the content of these laws from this letter.

Jesuits and their "domestic servants & half at least" of the "planting servants may be free from the public taxes and services and that the rest of our servants and our tenants, though exteriorly they do as others in the colony, yet that in the manner of exacting or doing it, privately, the custom of other Catholic countries may be observed, as much as may be;" 3. That, "though in public we suffer our cause to be heard & tried by the public magistrate, yet that, in private, they know that they do it, but as arbitrators & defenders of the church, because ecclesiastical jurisdiction is not yet here settled;" 4. "That, in our persons and with such as are needful to assist us, we may freely go, abide & live among the Savages, without any license to be had here from the Governor or any other;" and, lastly, that it be left to the discretion of the ecclesiastics, to determine what ecclesiastical privileges they must relinquish, to satisfy the English government, and that they may "enjoy any such privileges" as will not be noted by that government.

As to temporal affairs,<sup>236</sup> Copley repeats their request for land and asks that they may be allowed to employ one boat in trade "whensoever we shall not otherwise use it," and to buy corn from the Indians without asking permission of the provincial authorities.<sup>237</sup> Copley does not wish to eat "bread at their courtesy, whom as yet I have found very little courteous."

Baltimore evidently called this letter to Lewger's attention, for the latter refers to the Jesuits' complaints,<sup>238</sup> in a letter to the Proprietary dated January 5, 1638-9. Lewger says that when he told Poulton, a Jesuit priest who had just arrived, what were Baltimore's instructions of last summer, Poulton seemed surprised and would not believe

<sup>236</sup> Baltimore answered that they of the hill, "i. e. the Jesuits," "should have some temporal person to manage their affairs."

<sup>237</sup> He accuses the chief men of the colony of "neglecting planting for a peddling trade," and says it will be many years ere enough grain is raised for sustenance.

<sup>238</sup> 28 Fund Pubs. 194.

that More, the English Provincial of his Order, had said that "a Catholic magistrate may in discretion proceed here, as well affected magistrates in the like cases do in England." Lewger protests that he is not "conscious of anything yet done out of disrespect to their persons, functions, or rightful liberties." He writes of trade, of sending Baltimore deer and birds and arrowheads,<sup>239</sup> of the Proprietary's cattle in St. Mary's and of those he confiscated in Kent,<sup>240</sup> of providing swine, hens,<sup>241</sup> sheep,<sup>242</sup> goats and negroes<sup>243</sup> for the Proprietary and his sister, Mrs. Eure.<sup>244</sup>

#### FATHER WHITE'S REPORT

A month later than Lewger, Father White wrote an important letter<sup>245</sup> to Baltimore. He said that the estate of the province was "every day bettering itself, by increase of planters & plantations & large crops this year of corn & tobacco, the servants time now expiring."<sup>246</sup> He thought Baltimore was "much beloved & honored of all" and insisted that "we must use all means to full people the country." Men, who have been in the province, must be employed "as faithful servants, to your Lordship & this Colony for God's glory," to visit "all the shires of the land and work sollicitously with such a spirit of fervor & paines as if God required no other thing in this world in their hands but this." Every planter must bring over a man for every 2000 pounds of tobacco he raises. Baltimore himself may

<sup>239</sup> Apparently Leonard Calvert had explored beyond the falls of the Potomac (28 Fund Pubs. 201). Calvert must attend to providing arrow-heads. Lewger wrote that he scarce sees an Indian or an arrow in half a year (*op. cit.* 198).

<sup>240</sup> "Kine is a slow profit," and there is danger of overstocking the province.

<sup>241</sup> Lewger can spare 50 or 60 breeding hens at any time.

<sup>242</sup> He hopes to get these from Kemp in Virginia.

<sup>243</sup> "I hear of none come in this year."

<sup>244</sup> He discusses the adjustment of accounts between Leonard Calvert and his brother, the Proprietary, and plans to obtain a house for the latter.

<sup>245</sup> 28 Fund Pubs. 201, dated Feb. 20.

<sup>246</sup> I. e. those brought over in 1634, bound for 5 years.

reap the return, which the Jesuits have just had from their overseer, if the Proprietary will send over 45 men, under a careful overseer, and may receive 1000 pounds of tobacco per man and seven barrels of corn,<sup>247</sup> with peas, beans, and "mazump," with 200 head of poultry and turkeys. After the men are freed they "may, forever, by their chief rent maintain your Lordship's house." White also suggests that the Proprietary monopolize certain trades, especially that of brickmaking, and buy ships to be used for trade in Maryland tobacco, in exchange for all manner of commodities, sold from the Proprietary's "magazines in this Colony at reasonable prices." Other suggestions for gain are through the raising of swine on some large island and of goats and milch cattle, and through the planting of vineyards, the wild grapes of the province yielding a wine "not inferior in its age to any wine of Spain." As to the trade in beaver, White suggests that the "last concordat" between the "first adventurers" and the Proprietary is not satisfactory. By this concordat they paid the tenth of their cloth and beavers for five years and then "have no more right in trade," whereat they murmur that, in the "declaration and conditions of plantation, both share in trade and the land runs in one and the self same tenor," and, if the conditions as to trade are altered, "they can have no assurance for the lands you give them." A "common stock" has twice been tried and in it "every body was losers, which makes every body protest against it, as an engine and mystery to undo your Lordship & them." White urges Baltimore to yield greater privileges to the first adventurers and not make it easy for them to absent themselves from home<sup>248</sup> and trade in New Albion, diverting the trade of the province and setting up a market elsewhere, as Fleet has already planned. Better would it be for Baltimore to establish 3 factories: one at Palmer's

<sup>247</sup> Corn probably means grain here. Mazump is maize or Indian corn.

<sup>248</sup> Is not this the first time the word was applied to Maryland?

Island, for the trade of the Susquehannoughs; one at Nanticoke, "for all the Eastern foreland"; and the third at Anacostia, for the Mattawomecks. At each factory place a man with "sufficient truck" and "at the end of May, our boat may go and fetch the beaver at very small charge."

Of his personal affairs, White writes that he misses Copley and longs for the return of Altham, "who is a true zealant of the good of this place, very active & stirring." It seems these men have gone to England to smooth out matters between the Jesuits and the Proprietary. White is growing deaf and plans to return to London for treatment and so hopes more priests will soon be sent. The noble character of this saintly man is well seen from the fact that his great regrets are that the deafness hinders his hearing confessions and "learning the Indian language, which hath many dark gutturals & drowneth often the last syllable or letteth it so softly fall, as it is even by a good ear hard to be understood." His return will be but temporary. He wishes to be away from the province for a year only and, on his return, "I trust to bring more with me, who will not come alone." He is the first true Marylander in his love for the land. The health of the province has not been good; 16 have died "by disorder of eating flesh & drinking hot waters and wine, by advice of our Chirurgeon,"<sup>249</sup> rather than by any great malice of their fevers,<sup>250</sup> for they who kept our diet & abstinence generally recovered." "The over goodness of the land maketh the viands too substantial, that, if duly regulation be not used, in the time of summer, either agues arise from undigested food, or fevers, because great quantities of blood and vital spirits take fire from the heat of the season (our buildings being far too unfit for such a climate) or from some violent exercise." These diseases are "troublesome enough, where we want physic, yet not dangerous at all, if people

<sup>249</sup> Is this Gerard, who is criticised?

<sup>250</sup> White was twice at the point of death from fever in the past year.

will be ruled in their diet, which is hard for the vulgar, unless we had a hospital here to care for them & keep them to rule perforce, which some worthy persons of this place do think upon." This is probably the first suggestion for an hospital in British North America. Poor people, we may well imagine them, in those rude cabins, during the hot weather of summer, shaking with fever and ague and not yet supplied by their pious priests with that Jesuits' bark, which has ameliorated so much man's condition in the years since quinine has become a well-known drug.

#### EARLY COURT RECORDS

The organization of the province was becoming fixed. The first marriage license, to William Edwin and Mary Whitehead, was issued on March 26, 1638,<sup>251</sup> and a month before, on February 19, 1637-8, the first will was recorded,<sup>252</sup> that of a devout Roman Catholic, William Smith, who died probably in the autumn of 1635, leaving all his goods to his wife Anne.<sup>253</sup> The delay in filing this will shows that, until Lewger's arrival with Leonard Calvert's second commission, there was little formality in the administration of affairs. In fact, the first record of a suit in the Provincial Court is that of those brought by Evelin against the Kent Islanders on December 30, 1637. When the records begin, suits for debt and filing of recognizances to be satisfied when the tobacco crop comes in, are fairly frequent.<sup>254</sup> From these recognizances, we find that several planters were accustomed to work land in partnership with each other.<sup>255</sup> Suits for wages and covenants about hiring servants and paying their wages begin these long discussions concerning indentured servants, which are so

<sup>251</sup> 9 Fund Pubs. 280; 4 Md. Arch. Prov. Ct. 25.

<sup>252</sup> 9 Fund Pubs. 282.

<sup>253</sup> 4 Md. Arch. Prov. Ct. 16.

<sup>254</sup> Ct. 4 Md. Arch. Prov. Ct. 4, 5, 7, 8, 9, 11, 12, 17, 28, 31, 39, 46.  
Debts usually to be paid on Nov. 10.

<sup>255</sup> Cf. 4 Md. Arch. Prov. Ct. 7, 9, 10, 11, 12, 13, 15, 17, 26, 32.

characteristic of a bygone condition of society.<sup>256</sup> There is considerable formality and careful copying of English precedents from the first. Among the suits, we find one for defamation,<sup>257</sup> another in which Cornwallis was defendant, and the plaintiff unsuccessfully tried to prove that a hogshead of tobacco had been sold as "good and merchantable," but "proved nought," being wetted.<sup>258</sup> A man is bound over to keep the peace,<sup>259</sup> and there are a few miscellaneous cases, among them one of assumpsit against a sawyer, who was alleged not to have delivered boards for the use of the Jesuits at the appointed time.<sup>260</sup> The important case of the year,<sup>261</sup> however, was that against William Lewis. On Sunday, July 1, Lewis told Cornwallis that some of his servants had drawn up a petition to Sir John Harvey and intended, at chapel<sup>262</sup> that morning, to procure all the Protestants to sign it. Cornwallis called Lewger—Calvert being probably in Virginia—and then sent for Robert Sedgrave, one of those of whom Lewis spoke, and drew from him a confession of the writing, which he said was in the possession of Francis Gray, the carpenter. Gray was called, said that he had not as yet read the paper, which he drew from his bosom, but that Sedgrave had desired him to publish it to some of the freemen and procure them to sign it, as a petition to the Governor and Council for the redress of grievances. On reading the petition, which is couched in quaint, devout terms, it was found to be a complaint of the "abuses and scandalous reproaches which God and his ministers do daily suffer" from Lewis. He said that the Protestant

<sup>256</sup> 4 Md. Arch. Prov. Ct. 17, 21, 26, 27, 28, 33, 34, 47.

<sup>257</sup> 4 Md. Arch. Prov. Ct. 18. The action was settled out of court.

<sup>258</sup> 4 Md. Arch. Prov. Ct. 15.

<sup>259</sup> Op. cit. 19.

<sup>260</sup> Op. cit. 35, 40.

<sup>261</sup> Op. cit. 35.

<sup>262</sup> What chapel was this? Was there Protestant service at St. Mary's? Lewis lived at St. Inigoes. He married shortly afterwards (op. cit. 50). He was the Jesuits' overseer (28 Fund Pubs. 158).

clergy were "ministers of the devil," that their books are made by "the instruments of the devil," and will not allow his servants to "keep or read any book which doth appertain to our religion." "This greatly discomforts these poor bondmen . . . especially in this heathen country, where no godly minister is to teach and instruct ignorant people in the grounds of religion." Further, Lewis calls men into "his chamber & there laboreth with all vehemency, craft, & subtlety to delude ignorant persons." After reading the petition against "these absurd abuses & heridiculous crimes," Sedgrave and Gray were bade to return in the afternoon with security to attend court on these charges. The case was heard on Tuesday, July 3, before Calvert, Cornwallis, and Lewger. Sedgrave then testified that he had written the petition, because he and Gray were much offended at Lewis's speeches. When written, he kept it until Sunday, that Gray might speak with Copley. This he did on Saturday, and reported that Copley had given him good satisfaction and blamed much Lewis "for his contumelious speeches & ill governed zeal & said it was fit he should be punished." Gray testified that he asked Sedgrave to draw the petition, as the servants did not know what to do and could not go to the Governor for redress, as the freemen could. Lewis maintained that the whole accusation came from the fact that he came into a room where Sedgrave and Gray were reading Smith's sermons and they read the book aloud "that he might hear it, the matter being much reproachful to his religion, viz. that the Pope was Anti Christ & the Jesuits Anti Christian ministers." Lewis answered that "it was a falsehood and came from the devil as all lies did & that he that writ it was an instrument of the devil," and that he allowed them to have any books they pleased, "so that they read them not to his offence or disturbance in his own house." Here was a troublous matter.<sup>263</sup> Lewis was arousing the reli-

<sup>263</sup> The Governor refused to entertain hearsay evidence of the intent of the men to appeal to Virginia and have Lewis proceeded against there for treason.

gious question, which the administration had tried so hard to quiet, and might embroil matters in Virginia and England. Cornwallis thought that Lewis "offended against the public peace & against the proclamation (made in 1634) for the suppressing of all such disputes, tending to the cherishing of a faction in religion." Lewger said Lewis was guilty of "an offensive & indiscreet speech" and of exceeding his rights, by forbidding his servants "to read a book otherwise allowed and lawful to be read by the State" of England. He thought the general charges unproven, but, "because these his offensive speeches and his other unseasonable disputations in point of religion, were against public peace and a proclamation," he must pay a fine of 500 pounds of tobacco and give security for good behavior. As this judgment was passed by three Roman Catholic judges on one of their own faith, it goes far to prove that religious freedom existed in the province from the very first, especially as this action in the way of a religious controversy is a unique one in these early years. Five marriage bonds<sup>264</sup> were recorded in the court during our period, and seventeen estates came to be settled by Lewger as Judge of Probate.<sup>265</sup> All is done in due form. Administrators are appointed and give bond, inventories are filed, nuncupative wills are sworn to, and distribution made.<sup>266</sup> The only prominent men in this list are Jerome Hawley, who died in July, 1638, leaving a small estate, which was consumed in paying debts; Robert Wintour, another councillor, who died during the summer of 1638;

<sup>264</sup> Op. cit. 24, 50, 51.

<sup>265</sup> Three inquests are recorded: two of these are on men drowned (op. cit. 24).

<sup>266</sup> 1. J: Bryant, op. cit. 9, 23, 25, 30, 31, 33.—2. Michael Scott (Kent), 12.—3. J: Saunder, 14.—4. W: Smith, 16, 48.—5. J: Baxter, storekeeper, 76, 103.—6. Susan Sey (Hawley's servant), 24, 44.—7. Thomas Cullamore, 24, 39, 40, 74, 102.—8. Z. Mottershead, 24, 27, 46.—9. W. Blizzard (Kent), 24.—10. Richard Bradley, 32.—11. Jerome Hawley, 37, 40, to 45, 59, 100, 503.—12. Andrew Baker, 43, 105 (Evelin's servant).—13. J: Smithson, 45.—14. Jas. Hitches, 49, 54, 73.—15. E. Bateman, 54, 73.—16. Justinian Snow, 55, 79, 108.—17. Robert Wintour, 85, 105.

and Justinian Snow, who died "on the main sea," sailing to Maryland. The last was not in the jurisdiction of the court at the time of his death, but to save his goods his brother Marmaduke was appointed administrator of all property in Maryland or on the high seas.<sup>267</sup>

If some died, others came. Thomas Gerard, surgeon, had arrived with his brother-in-law, Marmaduke Snow, in April, 1638, and, on November 22, came the Brents, Margaret and Mary, and their brothers, Giles and Fulke,<sup>268</sup> with their servants.<sup>269</sup>

### THE THIRD ASSEMBLY

We hear but little else of the province during this year. In April, two men of Accomack were killed by Indians in a boat somewhere on the Eastern Shore.<sup>270</sup> In October, the vacant place of Commander of Kent Island was filled by the appointment of Wm. Brainthwait, who was empowered to hold a magistrate's court there and grant execution for debts.<sup>271</sup>

As it drew on towards the close of 1638, Leonard Calvert received tidings from his brother, in a letter<sup>272</sup> dated August 21, that he yielded his claim of the initiative in law-making and authorized the Governor in every General Assembly summoned in the province "to give assent unto such laws as you shall think fit and necessary for the good government of Maryland," which laws are approved by the major part of the freemen or their deputies. These laws must also conform to those of England and, when approved by the Governor, were to be in force unless transmitted to the Proprietary and vetoed by him under

<sup>267</sup> A month afterwards (April 24, 1639), as Marmaduke Snow was non compos mentis, Thomas Gerard was substituted for him.

<sup>268</sup> The brothers returned to England in March following, for a short time (Kilty's Landholder's assistant, 67).

<sup>269</sup> 3 Md. Arch. Coun. 74; 28 Fund Pubs. 195. The boat was not worth repairing; the beaver and peake were taken by L. Calvert as perquisites of his office of admiral.

<sup>270</sup> 3 Md. Arch. Coun. 81.

<sup>271</sup> 1 Md. Arch. Ass. 31.

the great seal of the province. This important point being settled, Calvert felt that it was wise to call a new Assembly, that some laws might be enacted. On December 21, 1638,<sup>272</sup> he summoned such body to meet at St. Mary's on the following 12th of February. The summons for the Assembly of the previous winter had called the freemen together "to consult & advise of the affairs of this Province." This summons calls their deputies for "the enacting of laws & other serious affairs." Two "discreet, honest burgesses"<sup>273</sup> should be chosen for each hundred by majority vote and the freemen of Kent should contribute "for the defraying of the charges" of their representatives incurred by "repairing to the Assembly." The first general election ever held in Maryland was carried on as follows: At Kent Fort the Kent Islanders met on February 18, 1638-9, and William Brainthwait, Commander of the Island, acted as judge. Lewger, as Secretary of the Province, acted as judge at all the Western Shore elections; meeting the freemen of Mattapanient Manor at his house on February 14; those of St. Michael's Hundred at St. Inigoe's on the 18th; those of St. Mary's at his house on the 19th; and those of St. George's at Capt. Fleet's former house on the 21st. Each Hundred chose two burgesses, but Mattapanient, which, being small, chose but one. Five men were personally summoned to the Assembly and these with Lewger and Calvert and the nine Burgesses made an Assembly of 16 members, which sat as one house<sup>274</sup> and began its sessions<sup>275</sup> on Monday, February 25, 1638-

<sup>272</sup> The writ to Kent Island was directed to the Commander; to the Western Shore Hundreds, to the several freemen by name.  
<sup>1</sup> Md. Arch. Ass. 27.

<sup>273</sup> Bozman, 103, 104, suggests the name may have come from Virginia and that the double vote of Governor and Proprietary may have been taken from the same source.

<sup>274</sup> I Md. Arch. Ass. 32.

<sup>275</sup> At Kent Island, 48 men voted, half of them for one of the deputies and half for the other. From Mattapanient, 7 voted, and of the six names signed to the return, 5 made their marks. From St. Michael's, 14 men voted, and of the 12 signatures to the return,

9, at St. Mary's Fort, whence it at once removed to St. John's.<sup>276</sup> Cornwallis is here and so are Greene and Dr. Gerard, while the two Brents, Fulke and Giles, have come to the province and been added to the Council. Wintour was dead and Evelin was away and John Boteler, Claiborne's brother-in-law, who had become partially reconciled to the Proprietary party, did not appear, though summoned as member of the Council. On the first day,<sup>277</sup> Cuthbert Fenwick and Robert Clerke, the Jesuits' employee, came and "claimed a voice, as not assenting to the election" of St. Mary's Burgesses. They were admitted, but seemed content with thus establishing their rights, for they do not seem to have returned after the morning session, and thus their admission was not so important as has been thought by some historians. The first thing done was to read Baltimore's letter,<sup>278</sup> permitting the Assembly to initiate legislation, and then was passed, before the rules of the houses were adopted, "An act for establishing the house of Assembly & the laws to be made therein." This act claimed for the Maryland Burgesses that they "supplied the places of all freemen consenting" to their election, "as do the Burgesses in the House of Commons" in England, and that they form the House of Assembly with the "gentlemen" personally summoned and such other freemen, who did not consent to the election, as may assemble.<sup>279</sup> Twelve was a quorum, of which number the Lieutenant-General and Secretary should always be two. The Gov-

<sup>276</sup> were those of marksmen; 17 voted from St. Mary's and 7 of the 15 signers of the return made their mark. Of the St. George's men, 20 voted, and 8 of the 18 signers were marksmen. The burgesses, of course, never signed the return, so we find there were 50 voters in Kent and 58 in St. Mary's, showing no great preponderance in the population of the Western Shore.

<sup>277</sup> <sup>2</sup> Bozman, 101, suggests that this was Baltimore's manor house near the town.

<sup>278</sup> <sup>1</sup> Md. Arch. Ass. 32. Was their admission merely to prove the right of any freeman?

<sup>279</sup> It was read again on the 28th. <sup>1</sup> Md. Arch. Ass. 35.

<sup>280</sup> <sup>1</sup> Md. Arch. Ass. 33, 81.

ernor had a casting vote and bills which were approved by the "major part of the persons assembled" and assented to by him, in the name of the Proprietary, should become laws, as if the Proprietary and all the freemen were personally present and assenting. The passage of this bill was followed by the adoption of orders<sup>280</sup> to be observed, largely copied from the rules of the last House. An act touching the payment of tobaccoes, already the provincial currency, was read,<sup>281</sup> and the Assembly adjourned till afternoon. At that time, 13 bills were introduced and then the House adjourned until Thursday, when 20 more bills were brought in. On the same day, the Assembly vindicated its powers as a court, by hearing a civil case, refusing a pardon to a Kent Islander,<sup>282</sup> and voting to have "whipped three several times" a man who was convicted of "flight and carrying away of goods unlawfully from his Master."<sup>283</sup> In the discussion of the bills which had been introduced, the House was occupied on Friday and Saturday and then adjourned until Wednesday, March 6, on which day a civil case, in which Cornwallis was a party, was heard. On Thursday, the courageous Mrs. James's suit against Evelin was heard,<sup>284</sup> and the "Court," for the Assembly was both legislative and judiciary, ordered that the "damages demanded should be alleged & drawn up in form next day," but no trace of this is found.<sup>285</sup> From Friday the Assembly adjourned until the next Friday, March 15, and, from that day, on which they did little, to Monday, March 18. At that time<sup>286</sup>

<sup>280</sup> I Md. Arch. Ass. 33. No one to use "nipping or uncivil terms."

<sup>281</sup> This bill seems to have been rejected on March 1. I Md. Arch. Ass. 36.

<sup>282</sup> I Md. Arch. Ass. 35. I cannot find record of his conviction nor what his "censure" was.

<sup>283</sup> Ten voted. Greene wished him hanged.

<sup>284</sup> I Md. Arch. Ass. 37.

<sup>285</sup> An interesting point of parliamentary law was raised this day, showing how keen the members were to seize on mistakes in procedure. I Md. Arch. Ass. 38.

<sup>286</sup> I Md. Arch. Ass. 39.

a new bill, "ordaining certain laws for the government of this Province," was introduced and twice read, and the Assembly returned to St. Mary's. On the morrow, this bill was passed, four of the Western Shore Burgesses voting against it, and the Assembly adjourned. Lewger spread on the records, in full, 36 bills which had not come to final passage. A probable theory is that Lewger, or some English lawyer, drafted these bills, which were too complex to suit the Assembly, and that after several adjournments, in the vain hope to have the bills passed,<sup>287</sup> Calvert accepted a short but comprehensive measure.<sup>287</sup>

### THE FIRST PROVINCIAL LAWS.

The act was established as a temporary one, to endure to the end of the next General Assembly, or for three years, if there be no Assembly within that time. Though Blackstone's remark<sup>288</sup> that the colonists carried "with them so much of the English law, as was applicable to their own situation & the condition of an infant colony," is a correct statement of the position of Maryland men, here, at length, through the Proprietary's judicious concession, is a beginning of their own law-making and here too began the enactment of temporary laws, so conspicuous a feature of the province's history. The statute begins with the rather mysterious statement that "Holy church within this Province shall have all her rights & Liberties."<sup>289</sup> This is probably an echo of a similar clause in Magna Charta and hardly looked towards an establishment of the Roman Catholic Church, as Bozman thought. Johnson's view is more probable, that the Assembly meant "that the Christian Church should be free from unlawful interference by any temporal power whatever," and that the provision was a "guaranty of liberty of conscience to all Christian people in Maryland."

<sup>287</sup> 1 Md. Arch. Ass. 82.

<sup>288</sup> 1 Commentaries, 107.

<sup>289</sup> 1 Md. Arch. Ass. 40, 82; 2 Bozman, 107 ff. 18 Fund. Pubs. 2.

The second provision<sup>290</sup> required all "inhabitants" to take "an oath of allegiance to his majesty," but gave no form for such oath, though one had been contained in a bill which failed of passage. This latter bill was based on the English Statute,<sup>291</sup> but omitted from the oath it prescribed the denial of the power of the Pope to depose the King or intermeddle in English affairs. The bill also inserted the word "lawful" before "successors" of the King in stating to whom allegiance was sworn, and omitted the word "persons," in binding the oath-taker to defend the ruler from conspiracies against "his or their crown or dignity." Bozman suggests, acutely, that these changes would render the oath more acceptable to Roman Catholics and reminds us that the unamended oath was the one tendered the first Lord Baltimore in Virginia some years before. Though the bill was not passed, Calvert adopted the form of oath therein contained as the one to be used in the province, and at a court held the day after the adjournment of the Assembly, had the secretary administer this oath to him, and then Calvert administered it in turn to all the Council.<sup>292</sup> The statute goes on to state that the "Lord Proprietary shall have all his rights & prerogatives." Here again we have merely a general statement, but two of the engrossed bills show us what probably was meant and that especial thought was directed to his title to the lands and to his monopoly of Indian trade. Claiborne, and the Dutch and Swedes on the Delaware, must be kept out. Just at this time, the spring

<sup>290</sup> 2 Bozman, 111.

<sup>291</sup> 3 Jac. I, ch. 4, the oath is given in full in 2 Bozman, 600.

<sup>292</sup> 3 Md. Arch. Coun. 85. 2 Bozman, 111, thinks this a proof that the bills copied in the records, but not enacted, were considered as directory to, if not obligatory upon, the inhabitants of the province; but it seems more likely that, in the absence of a legally enacted form of oath, Calvert chose a form which was acceptable to himself. On the same day, he gave official oaths to councillors and secretary in form prescribed by another bill which failed to pass (*vide*, 1 Md. Arch. Ass. 44). Similarly we find that this form was used five years later, when James Neale was sworn in the Council (3 Md. Arch. Ass. 131).

fur trade was beginning and Calvert was very active.<sup>293</sup> On March 6, he directed John Harrington to seize any persons, vessels or goods found in the Indian trade without the Proprietary's license;<sup>294</sup> on March 11, he commissioned Fenwick and John Hollis to search any vessels in the province and arrest those engaged in such illicit trade; and on March 14, he commissioned Andrew Chappell and Thomas Morris to engage in the Indian trade.

The fourth provision of the act enacts that the inhabitants shall have all their "rights and liberties according to the great charter of England."<sup>295</sup> This brief but comprehensive statement was substituted for a bill enumerating provisions of the great charter to which the colonists were entitled, and its breadth shows the completeness with which the settlers claimed the right of Englishmen.

The next two paragraphs in the law are well called a "legislative confirmation of the previous arrangements," for the judiciary made by the executive.<sup>296</sup> They follow Baltimore's instructions to Calvert, in great measure, and direct that the Governor within the province and the commander of Kent, within the island, except where they are parties, shall be judges in civil cases, the Governor being apparently not bound by his Council's opinions. In criminal cases, however, the Lieutenant-General and Council have jurisdiction and, in crimes punished by loss of life or member, a jury trial is necessary for conviction.<sup>297</sup> Bozman points out that by the commission of April 15, 1637, the judges should determine cases involving loss of life or

<sup>293</sup> 1 Md. Arch. Ass. 41, 44. A bill for trade with the Indians was rejected, p. 36, and a second one of different character introduced, p. 38 (3 Md. Arch. Coun. 84).

<sup>294</sup> 3 Md. Arch. Coun. 83, 85. A commission of the sort was issued on April 13 to T: Boys (3 Md. Arch. Coun. 85). Licenses to trade are found to Andrew Chappell and Thomas Morris (3 Md. Arch. Coun. 84, 87).

<sup>295</sup> 2 Bozman, 116; 1 Md. Arch. Ass. 41.

<sup>296</sup> 2 Bozman, 117; 1 Md. Arch. Ass. 83.

<sup>297</sup> The commander of Kent was able to act in petty cases without "Council." 2 Bozman, 119 ff.; 1 Md. Arch. Ass. 71 ff.

member as a punishment "according to the laws of the Province," and there were no such criminal laws passed, though bills were introduced for treasons, felonies, allowing book to certain felonies (i. e., benefit of clergy) and "determining enormous offences."

Other bills,<sup>298</sup> which failed, would have made the judicial system more complex, providing for a court of admiralty, a county court, a court of chancery, a pretorial court for trial of capital crimes and enormous offences.<sup>299</sup> The justice of the peace's court was provided for in another bill, and still another directed the establishment of tythingmen of manors, constables of hundreds, a sheriff and coroner of the county, and a public executioner. A complete organization of the Island of Kent was formed by still another bill, while still another provided for the recovery of debts.<sup>300</sup>

In the seventh paragraph of the statute, we find a confirmation of the probate powers of the secretary and a grant to the commander of Kent to preserve the estates of deceased persons, till a will be filed or administration granted.<sup>301</sup> An elaborate bill for succession to goods is found among those engrossed, as are others to fix descent of lands, assuring land titles, enrolling grants<sup>302</sup> and "people of the province, and limiting times of servants."<sup>303</sup>

Though a militia law was among those that failed, the act passed provided for the use of military power by the captain of the military band and the commander of Kent, under direction of the Governor.<sup>304</sup>

The great subject of officers' fees,<sup>305</sup> so long a vital one

<sup>298</sup> 2 Bozman, 127 ff.; 1 Md. Arch. Ass. 46 ff.

<sup>299</sup> The name doubtless comes from the Latin word *praetoria*, used in the charter as the name of one of the courts the Proprietary might establish. Special privileges given Lords of the Manor in this bill seem to show the purpose of establishing a colonial nobility.

<sup>300</sup> 1 Md. Arch. Ass. 67; 2 Bozman, 141.

<sup>301</sup> 1 Md. Arch. Ass. 64; 2 Bozman, 144.

<sup>302</sup> 1 Md. Arch. Ass. 60 ff.

<sup>303</sup> 1 Md. Arch. Ass. 80.

<sup>304</sup> 1 Md. Arch. Ass. 77-84.

<sup>305</sup> 1 Md. Arch. Ass. 57 ff.; 2 Bozman, 146.

in provincial politics, is first introduced here by a provision that they be paid, according to the table in an engrossed bill. The treasurer is to defray necessary public charges by warrant from Governor and Council. The Governor and Council are empowered to "appoint" how goods without an owner shall be "employed."<sup>306</sup> Goods of an insolvent debtor must be "sold at an outcry & distributed equally among all the creditors inhabiting within the Province," with the following preferences: first, debts to the Lord Proprietary; second, fees and duties to public officers and charges; third, ordinary debts; fourth, debts for "wine and hot waters." This early insolvency law shows also the first unfavorable legislation towards the liquor traffic.

Every person planting tobacco was directed by the statute to "plant & tend 2 acres of corn," to prevent danger of want in case of Indian hostility or of growth of population beyond what the Indians could supply;<sup>307</sup> tobacco shipped from Maryland to any place not in England, Ireland or Virginia should pay an export duty of 5 per cent, which the engrossed bill gave to the Proprietary, thus imitating a similar duty which went to the King in the Virginia charter.<sup>308</sup>

The next paragraph of the act deals with constitutional law and provides that future Assemblies shall be composed just as this one was, of Governor, Secretary, Gentlemen especially summoned, and one or two burgesses out of every hundred.<sup>309</sup>

<sup>306</sup> 1 Md. Arch. Ass. 84.

<sup>307</sup> 2 Bozman, 83, 148, 593, shows that Charles I attempted to make a royal monopoly of tobacco traffic in 1635, and points out that a similar law was passed in Virginia in 1624 and 1629. 1 Md. Arch. Ass. 79, 80, act for weights and measures for custom on tobaccos.

<sup>308</sup> Public ports are provided for in the engrossed bills. 1 Md. Arch. Ass. 76.

<sup>309</sup> 2 Bozman, 151. Engrossed bills, providing for at least a triennial assembly and prescribing what persons should sit therein, are found in 1 Md. Arch. Ass. 74 ff., and a Town house is directed to be built, p. 76.

The act proceeds, directing that all commissions from the Proprietary in force at his death shall remain so till a new commission issues under the great seal, and the final provision is a quaint one, levying as a tax, a maximum amount of 10,000 lbs. tobacco a year, for two years, on all inhabitants of the colony, to pay for "any bargain which the Lieutenant General & council shall make with any undertaker for the setting up of a water mill for the use of this colony."

Here a discussion of the beginnings of Maryland may well end. The Proprietary has secured title to his province and established a permanent settlement there, has ousted all other claimants for the time being, and has established a permanent policy with reference to his relations to the settlers in matters of law-making. Economically, the fur-trading period of provincial history is passing away and the planting period is beginning. In the near future, the troubles of the English Civil War will involve the province in difficulties and show the beginnings of that interrelation of English and American politics, which lasted until there was no longer a province of Maryland. A study of these troubles, however, may well be disassociated from the narration of the first settlement.

THE ENGLISH STATUTES IN  
MARYLAND.



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THE ENGLISH STATUTES  
IN MARYLAND

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## CONTENTS.

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	PAGE.
INTRODUCTION. THE RELATION OF THIS STUDY TO THAT ENTITLED ECONOMICS AND POLITICS....	7
CHAPTER I. THE LEGAL SYSTEM IN MARYLAND TO THE END OF THE ROYAL GOVERNMENT.....	II
CHAPTER II. THE LEGAL THEORY AS TO THE EXTENSION OF ENGLISH STATUTES TO THE PLANTA- TIONS, AND SOME PRACTICAL ILLUSTRA- TIONS FROM OTHER COLONIES.....	17
CHAPTER III. THE TEN YEARS' CONTROVERSY, 1722-1732, AND THE FINAL POSITION OF THE ENG- LISH STATUTES IN MARYLAND LAW....	31
CHAPTER IV. THE ARGUMENTS IN THE DEBATE OF 1722-32	43
CHAPTER V. RESULTS OF THE CONTROVERSY — DIRECT AND INDIRECT.....	61
APPENDICES.....	71



# THE ENGLISH STATUTES IN MARYLAND.

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## INTRODUCTION.

The study here presented, though itself forming a complete whole, is also a sequel to the former monograph, "Economics and Politics in Maryland, 1720-1750," etc. In that paper it was shown that these years of Maryland history, neglected by most writers, or regarded as quiet and uneventful, constituted really a period of great disturbance. This was on agricultural grounds, primarily, because the tobacco crop was so excessive that prices, fixed in England, became lower and lower, and the colonists were reduced to poverty. Consequently, violent attacks were made not merely against the Proprietor, but also against those classes whose incomes were derived from fees or salaries—the lawyers, the clergy, and the proprietary officers. After long wrangling over methods of betterment, the economic condition of the provinces was at length improved through limitation and regulation of tobacco planting, through the development of a more varied agriculture, and through the importation of a different sort of immigrants. During this period, also, there appeared as one of the leaders in many of these measures the elder Daniel Dulany, who first as a popular leader, and then as a proprietary officer, on the one hand laid the foundation for the power exercised in the next epoch by his sons and other relatives, and on the other devoted himself in more ways than one to the furtherance of the economic and political welfare of the colony.

Throughout a large part of this same period, or, to be exact, from 1722 to 1732, another controversy was heatedly

waged—that over the extension to Maryland of Acts of the English Parliament. This controversy, which was referred to very briefly before, constitutes, with its causes and results, the main subject-matter of the present essay. The bare narrative of the affair has been given by McMahon, and somewhat satisfactorily by Mereness; but in neither case has the treatment been very broad, and the course of events in Maryland has not been set in due relation to the general history of Great Britain or the other colonies. It is the wider outlook attempted in this paper which must justify the repetition of some parts of the story that have been told before.

It will conduce to clearness if the order of treatment be outlined at the start. First, the development of the question in Maryland is carried down from the earliest times to the end of the royal government. Here, as the colony grows, we see the development of a legal system, twisted out of natural progress by peculiarities of the Maryland palatinate government. Then, leaving the discussion of Maryland, we trace briefly the legal doctrine declared by English judges and lawyers, the value of which, for purposes of comparison, is equaled only by the information derived from the experience of other colonies, parts of which receive some discussion. Next, the reader is brought back to the legislative history of the dispute, in the decade 1722-1732, and in the later phases to the present time. The narrative part of the work thus concluded, we turn to the more interesting consideration of the arguments in the debate, as exhibited in certain important documents. Lastly, inquiry as to the total effect of these arguments in their relation to English and American colonial history leads us to a résumé and conclusion.

While references to authorities are given in the notes, a brief bibliographical statement will be in order. The sources for these studies are found chiefly in the records of the Assembly of Maryland. For the greater part of the seventeenth century these have been printed in the Maryland Archives, but for the eighteenth century they are entirely in manuscript form, except for a few printed "Votes and Pro-

ceedings," usually incomplete. Next in importance are the Calvert Papers, mostly manuscripts, but in part printed. The manuscript matter in the Public Record Office in London is not so satisfactory for this as for some other periods of Maryland history. Other manuscripts have been examined in the library of the Maryland Historical Society, the Episcopal Library in Baltimore, and the library at Fulham Palace. Important also are the pamphlets of Dulany and others, and the files of the *Maryland Gazette*.

As guides, we have for Maryland McMahon, to whose judgment, though he wrote seventy years ago, we turn with respect, as do students of English history to the classics of the late Bishop of Oxford. The book of Mereness is of constant help, but contains minor errors as to this matter, and suffers from the lack of any comparative method. Besides these, several monographs in the Johns Hopkins Studies, and in the reports of the American Historical Association, especially those of Dr. Steiner, are to be consulted.

In Virginia there is, unfortunately, little that bears on the eighteenth century, to which period Bruce's valuable work does not extend. Ripley's Financial History covers that one side. For Pennsylvania we have followed Shepherd's monograph on the Proprietary Government of that Colony, and Lincoln's on the Revolutionary Movement. For Carolina McCrady's recent History, and for Jamaica the venerable work of Long have been our authorities.

The legal side has been followed out through Harris and McHenry's Maryland reports, the English reports, Chalmer's Opinions, Annals and Introduction, with Burge for the modern period, supplemented by the recent works of Egerton and of Snow. Frequent reference is made, also, to Reinsch's dissertation on the English Common Law in the American Colonies, which is very good as far as it goes.

With reference to the English statutes, the reader is reminded that we have written particularly concerning Maryland, and have introduced the experience of other colonies only to the extent of comparison. At some future time this

topic will be treated in its general development, in which very interesting and very different phases appear in New England, in the Central Colonies, in Canada, and in the West Indies. It will then be possible, also, to emphasize more than is here attempted, the relation of the matter to the Revolution and to the political ideas of that time.

Finally, the author must express his very sincere thanks to all those who, in the north and in the south, in America and in England, have extended to him their kind assistance. If he ventures any specification, his gratitude is due pre-eminently to the members of the departments of historical and political science in the Johns Hopkins University and in Smith College; to the Maryland Historical Society—especially to its Assistant Librarian; and above all to his mother, without whose interest and help the work of investigation would have been impossible.

## CHAPTER I.

### THE LEGAL SYSTEM IN MARYLAND TO THE END OF THE ROYAL GOVERNMENT.

"It is observable," wrote Governor Hutchinson, "that all the colonies, before the reign of King Charles the Second, Maryland excepted, settled a model of government for themselves."<sup>1</sup> In this exception—for which the author vouchsafed no explanation—are reflected the turmoil of the history of Maryland, the vicissitudes of the proprietary government, and the constitutional struggles within the colony.

Among the very earliest of the many contests which mark the relations of the Proprietors and their colonists was one about the very foundations of government—"what laws the colony should be governed by." The sixth and seventh paragraphs of the royal charter gave to the Proprietor and his heirs the right

"to ordain, make and enact laws, of what kind soever, according to their sound discretions, whether relating to the public state of the said province, or the private utility of individuals, of and with the advice, assent and approbation of the freemen of the said province, or the greater part of them, or of their delegates or deputies, whom we will shall be called together for the framing of laws, when and as often as need shall require, by the aforesaid now Baron of Baltimore and his heirs, and in the form which shall seem best to him or them . . . etc."

The Proprietor could also issue "fit and wholesome ordinances from time to time." But these should not affect the "right or interest of any person or persons of or in member, life, freehold, goods or chattels." Further, in the charter is included the common limitation that all laws must "be consonant to reason and not be repugnant . . . to the laws, statutes, customs, and rights of this our Kingdom of England."

Dispute at once arose over the power of initiating legislation. The first settlers of Virginia had been subject to laws

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<sup>1</sup> Hutchinson: History of Massachusetts Bay, Vol. I, p. 94, note. The edition used purports to be the second, and bears date MDCCCLX, but the preface shows that this should be MDCCCLXIV.

made for them,<sup>2</sup> until a representative Assembly "broke out" in 1619; and later, under the royal government, the laws of Virginia were under the direct control of the crown. In Maryland, the second Assembly, that of 1637, refused to accept a body of laws sent over by the Proprietor and insisted on their own right of initiation, even if the results were very similar to those intended by the Proprietor.<sup>3</sup>

At the first Assembly an act had been passed to establish for felonies the same penalties as in England, but this was now considered as no longer in force, and on the uncertainty, the Assembly proceeded against Claiborne and Smith by bills of attainder. For lesser matters Governor Calvert's commission authorized him to proceed according to the laws of England.<sup>3a</sup> During the first ten years of the colony's existence, in fact, whenever there was a lack of specific colonial precedent or law, and in cases which did not involve the loss of life, member or freehold, there was a tendency to refer to the law of England so far as applicable.<sup>4</sup> Then ensued a period when more discretion was given to the courts, and only specific statutes or customs of England were introduced by the legislature.<sup>5</sup> But after the Restoration matters took a more definite shape. In 1662 an act was passed, which, waiving the former distinctions as to crimes, provided that in all cases when the laws of the Province were silent, justice should be administered "according to the laws and statutes of England, if pleaded and produced." To meet objections expressed by the Upper House as to the inconvenience of the extension of all English laws to Maryland, the decision as to the right pleading and the consistency with the provincial welfare

<sup>2</sup> Brown, A. *The First Republic in America*, *passim*. See index, s. v. Laws.

<sup>3</sup> Maryland Archives. I. *Assembly Proceedings*, pp. 9-24.

<sup>3a</sup> *Ibid.* pp. 16-24. Bacon, *Laws of Maryland*, p. 6 and note.

<sup>4</sup> Maryland Archives. I. *Ass. Pro.* pp. 147, 183-4. McMahon p. 113. Mereness pp. 258-9. Reinsch p. 41. Bacon, *Laws of Md.—Acts of 1642*, summer, ch. 4; 1642; fall, ch. 2, 3.

<sup>5</sup> Maryland Archives. I. *Ass. Pro.* p. 210. Bacon's *Laws of Md.—Act of 1646*, ch. 2.

of the English laws involved was left with the courts.<sup>6</sup> This act Reinsch describes as "the first definite recognition in America of the power of the courts to apply the common law of England to colonial conditions and to rigid provisions deemed unsuitable."<sup>7</sup>

Then followed a period of uncertainty. If in 1681 the members of the Lower House appeared willing to recede from their demand for the English laws,<sup>8</sup> on other occasions they emphasized their right to them. In 1674, for example, a bill to fix definitely what original statutes should be in force in Maryland was lost by the opinion of the Lower House that the introduction of English statutes should be general.<sup>9</sup> Ten years later, when the troublous times of the Revolution were drawing nigh, upon another attempt of the Lower House to secure legal recognition of their desired end, the Proprietor commented at length on the danger of this idea and answered that he was willing to

"admit this alteration, that when the laws of this province are silent, justice may be administered according to the laws of England, if the Governor or Chief Judge and the justices of my court shall find such laws consistent with the condition of my Province. To a bill with this alteration will I set my hand, but not otherwise."<sup>10</sup>

Later still, and not long before the Revolution, the Lower House resolved—a procedure hitherto rare, but, as Mereness well points out, one that later became formidable—that they demanded "the benefit of the laws of England and of this Province as our inherent and just right."<sup>11</sup>

Thus early appeared an indefiniteness which, on the side of colonial law, at least, justifies the remark of Governor Hutchinson. For although the Assembly succeeded in maintaining

<sup>6</sup> Maryland Archives. I. Ass. Pro. pp. 435-6, 448, 504. Mereness p. 261. McMahon p. 113. Bacon, Laws of Md.—Act of 1662, ch. 3.

<sup>7</sup> Reinsch, p. 42.

<sup>8</sup> In order to increase the power of the County courts at the expense of the Provincial Court.

<sup>9</sup> Mereness, pp. 261-262.

<sup>10</sup> Ibid., p. 264.

<sup>11</sup> Ibid., p. 264; and see Bacon, Laws of Md., Acts of 1663, ch. 4, and note; 1676, ch. 1, 2 and notes; 1678, ch. 15, 16 and notes; 1681, ch. 3; 1682, ch. 12.

its right of initiative, and passed acts for the Province, such legislation never amounted to a complete and inclusive code.<sup>12</sup> These provincial acts were often negatived by the Proprietor, and in time the Assembly—and especially the Lower House—claimed for Maryland the extension to the Province of not only the common law of England, but also the statute law of the mother country, in cases where no specific law of the Province applied. The former claim was before long admitted by the Proprietor;<sup>13</sup> and the common law, so far as applicable and unmodified, became a recognized part of the law of Maryland. The demand as to the statutes, however, was denied.

While the statutory doctrine was thus uncertain, the commissions issued to the judges were understood—at least, in after years—to refer to the Laws of England, or the Laws and Statutes of England, as supplying the deficiencies of the Province laws.<sup>14</sup> The difficulty was that these judges were proprietary officers, over whom the Assembly had little control, and that they might use their discretion arbitrarily. That this was not an imaginary danger is shown by the action of the Governor in 1677, when he declared that an Act of Parliament against nuncupative wills was in full force in Maryland,<sup>15</sup> while in Fendall's trial the English law of treason was applied.<sup>16</sup> Such measures as these were regarded by the Assembly as legislation without their consent; and in the expanded statement of grievances issued by the Protestant party in the Revolution we find these charges against the Proprietor emphasized:

Making laws without the consent of the Assembly and extending them to the estates of the inhabitants.

<sup>12</sup> Maryland Archives. I. Ass. Pro. *passim*. Steiner, Maryland's First Courts. American Historical Association Report, 1901, Vol. I, p. 222.

<sup>13</sup> McMahon. *Historical View*, pp. 113-116. Reinseh, P. S. *English Common Law in the Early American Colonies*. Bulletin of the University of Wisconsin, No. 31 [1899].

<sup>14</sup> McMahon, p. 113. See also the documents referred to below.

<sup>15</sup> Sparks. *Causes of the Maryland Revolution of 1688* [in Johns Hopkins University Studies, Series XIV.], p. 75, citing Lib. R. R., 158.

<sup>16</sup> Ibid. p. 86, citing III. Ass. Pro., pp. 313, 330, 332.

Assuming a power to assent or dissent when and to what laws he pleased, that are made in his absence from the Province.

Assuming a power to repeal laws by proclamation.

Assuming a power to dispense with laws made that had received his own personal assent.<sup>17</sup>

The appearance of these charges in the many laid against the Proprietary Government reinforces the opinion which the reader has doubtless formed ere this, that the fundamental difficulty in this matter, in the case of Maryland, lay in the control which the Proprietor could and did exercise over legislation. Into the justice or injustice of the specific indictments we have no need to go. It is certain that there had been bad government, and not the least of the unrest which made possible the Revolution of 1688 arose from the uncertainty of the law. The "model of government" in this respect, at least, was still unsettled.

The royal administration of the Province left in many ways lasting effects upon the destinies of Maryland. In legislation especially was this period noteworthy. But while the laws were revised and many excellent ones given a permanent place upon the statute book, no solution was found for this long standing and—we cannot help feeling—somewhat cherished opportunity for wrangling.

All the legislation upon this subject either expired or failed to pass.<sup>18</sup> From the commissions of the people, however, and from certain judicial decisions, it is manifest that the old claim of extension, in line with the principles of the Act of 1662, was not given up.<sup>19</sup> In the latter years of the royal

<sup>17</sup> Sparks, p. 105, citing III. Council Proceedings, pp. 215, 217, 219.

<sup>18</sup> The Act of 1692, ch. 36, revived that of 1678, but was repealed by the Act of 1700, ch. 8. See Bacon, *Laws of Md.* The Act of 1696, ch. 18, was interesting for this reason: the Assembly attached a clause implying the extension of the English statutes generally, and the Act was disallowed by the Crown as including legislation of a different nature from that set forth in the title of the bill. The bill was one of those for the establishment of the Church. See *Economics and Politics*, p. 18. This Act of 1696 was extended by Act of 1699, ch. 46, but both were dissented to by the Crown; see Bacon, *Laws of Md.*

<sup>19</sup> McMahon, pp. 119-120. Cases in 1707 and 1711 are mentioned in note 1. To these may be added others in 1712 and 1714, for which see 1 Harris and McHenry 28-30. In these latter cases, the decision was against the extension of particular statutes. See below, p. 32.

government, some English Statutes were definitely introduced by Act of Assembly, one of which was the English Act of Toleration<sup>20</sup>—and at the same time the Lower House came nearer a sensible solution of the difficulty than before; for at their command the Chief Justice, one of their body, drew up a list of statutes which were to be considered as extending to Maryland. But even after this had been revised and supplemented by the wish of others, this list was not legally adopted.<sup>21</sup> Later, after further resolutions by the Lower House, with no result,<sup>22</sup> in 1714 Governor Hart suggested, and the Upper House proposed to the Lower that the Assembly should request some of the Queen's counsel and others most eminent in the law to give their opinions as to what laws of England did extend to Maryland.<sup>23</sup> At this time and in this way the affair might have been brought to a reasonable and successful close—at least in so far as the past was concerned, but the Lower House postponed the matter; then shortly followed the restoration of the Province to the Proprietors, and nothing was done as to the general principle. An Act of 1715, however, required the court of the Judge or Commissary General for Probate of Wills and granting Administrations to proceed “according to the Laws of England now in force, or to be hereafter in force, within twelve months after such laws shall be published in the Kingdom of Great Britain, if pleaded before him, saving in such cases as by this present Act is provided.”<sup>24</sup>

Such, in outline, was the development of this controversy down to 1722, at which time the latest and most important phase of it added strife over this matter to the many other difficulties of those years. At this point, we may suspend the narrative to inquire as to the principles involved, especially those found upon the side of the English courts, or in the experience of other colonies.

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<sup>20</sup> Act of 1706, ch. 8. This also introduced the English Statute I, Jac. I ch. II, against bigamy.

<sup>21</sup> Mereness, p. 266.

<sup>22</sup> Mereness, p. 267.

<sup>23</sup> 1714. Upper House Journal (MS.) June 28-29, July 1, 1714. Steiner, Restoration, p. 239.

<sup>24</sup> Bacon, Laws of Md. Act of 1715, ch. 39, § 2.

## CHAPTER II.

### THE LEGAL THEORY AS TO THE EXTENSION OF ENGLISH STATUTES TO THE PLANTATIONS, AND SOME PRACTICAL ILLUSTRATIONS FROM OTHER COLONIES.

The rapid expansion, in recent years, of the territory belonging to the United States, and the judicial determination, in the Insular Cases, of the relation of subject peoples to the American Republic have revived a question as old as the Constitution itself. This latest phase, involving possessions disconnected and far removed, makes us readier than before to examine the experience of other colonizing powers, especially of that British Empire from which the thirteen colonies separated themselves by the Revolution. At the present writing, moreover, the modern constitution of that empire is being subjected to fresh scrutiny and review, through the pressure of economic problems whose solution involves to the foundation the relation of Great Britain and her dependencies. But since, in the logic of history, the present has grown out of the past, a study which carries us back to the first building of that imperial system, and to the time when we were part of it, seems to be not unseasonable. Therefore, as our last chapter was local in its point of view, this is to be imperial in its outlook; and, leaving as beyond our proper field all considerations of economic relations, we shall inquire briefly into the theories held, in the seventeenth and eighteenth centuries, by English judges and lawyers, as to the legal status of the colonies, and especially as to the extension to these of Statutes of the British Parliament. Afterwards, for the purpose of comparison, we shall review the experiences of a few other colonies, which involved these theories or principles similar to those contested in Maryland.

We may first direct our attention to a case which was decided early in the seventeenth century, as a result of the union

of the English and Scottish monarchies in the person of James I. For details as to the desire of James to secure for his Scotch subjects the rights of citizenship in the richer land of the South, and the general history of the "Post-nati," we must refer to the historical writings of Gardiner and Hallam, and here direct our attention to a test case, known as Calvin's Case, made up in connection with the Post-nati decision that citizens of Scotland born after James' accession were to be accounted as legally naturalized in England. In Calvin's Case the Judges enunciated certain opinions as to the position of "dependencies" with relation to the central government. A dependency, they held, was a "parcel of the Realm in tenure," and Parliament might make any statute to bind such dependency, where the latter was definitely named; but without such special naming a statute did not bind.

At the same time the judges went into an extended classification of the dominions dependent on the British Crown. These they divided into

1. Christian countries to which the laws of England have been given by King or by Parliament.
2. Countries which come to the King through inheritance. In neither of these can the King "change" the laws.
3. Conquered countries inhabited by Christians. Here the laws of the conquered remain in effect until the King changes them,—which is entirely within his prerogative.
4. Conquered heathen countries at once lose their rights or laws by the conquest, "for that they be not only against Christianity, but against the law of God and of nature, contained in the Decalogue." As to these, the monarch "by himself and such judges as he shall appoint, shall judge them and their causes according to natural equity . . . until certain laws be established among them."<sup>1</sup>

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<sup>1</sup> Rep. 17. We have followed the analysis in Snow: *The Administration of Dependencies*. The case was almost always cited whenever the question came up. Of especial interest is Lord Mansfield's brief consideration of it in the Grenada Judgment (*Campbell v. Hall*), 1774. His remarks were published in pamphlet form as Lord Mansfield's Speech on Giving the Judgment of the Court of King's Bench . . . in the Case of *Campbell v. Hall* . . . London, 1775; A New Edition, Corrected. He calls attention to the "absurd exception, as to pagans . . . (which) shows the universality and antiquity of the maxim." The earlier history of these principles, before Calvin's Case, lies beyond our discussion. It may be noted, however, that they belong to International Law.

The year in which this decision was rendered (1607) marks the very beginning of successful English settlement in North America; but the principles then formulated were put into practice especially in the colonization of Ireland in this and in the succeeding reign.<sup>2</sup> For the ends of this paper, it is to be remembered as the first "leading case" that declared the distinction between conquered and settled dependent territories, and applied a different rule to these classes respectively.

As settlement in the new world progressed, and governments of one form or another were established by royal permission, or instruction, we find all the charters save one granting to the colonists the rights of English citizens, and the claim to these rights maintained by the inhabitants of every colony, whether in possession of a charter or not. As to the interpretation of these rights, and the determination of their extent, discussion and dispute were more or less continuous. Every colony, however, at some time during its constitutional history had to face this question of the relation of the colonial law to the legal system of the mother country. In our ordinary study we naturally emphasize the history of the English colonies on the Atlantic coast—and of only some of those—but occasionally we are led to other regions for our best sources of information.

The next important judicial decision was one that concerned the colony of Jamaica. The whole constitutional development of this island is of the greatest significance in American colonial history, and far too little attention has been paid to it. In this connection, especially, certain similarities and certain differences render very interesting a comparison with Maryland.

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<sup>2</sup> The frequency of reference to the analogy of Ireland's law is noteworthy. See the matter upon the constitutional development in Ireland, in Hallam. *The Constitutional History of England*, ch. xviii. Compare, also, I. Blackstone's Comm. 103-4; Lord Mansfield's decision in *Campbell v. Hall*, quoted above; a pamphlet entitled *The Privileges of the Island of Jamaica Vindicated*, London, 1766 (rep.). A recent discussion of this whole matter is found in Snow, A. *The Administration of Dependencies*, chaps. 1-4.

The case of *Blankard v. Galdy* is one to which very frequent reference will be necessary. The matter at issue was a suit on a bond, and involved the extension of an English Act to Jamaica. The counsel for the plaintiff argued that Jamaica was an island beyond the sea conquered from the Indians and the Spaniards in Queen Elizabeth's time<sup>3</sup> [sic], that the inhabitants were bound by their own law, and that as they were not represented in Parliament, so they could not be bound by English statutes unless specially named. Statutes were cited—among them 5 Eliz. ch. 4, as to servants—which would be destructive if enforced there, and others, such as the Act of Usury, which does not apply, “for they allow them more for the loan of money than is permitted by that law.” Several Acts of Parliament which have “taken notice” of Jamaica are cited.

Then is adduced the Earl of Derby's Case, where the Court held that English statutes did not bind the inhabitants of the Isle of Man, a conquered province, unless they were specially mentioned.

Counsel for the defendant argued contra that the liberties lost were those of the conquered; those that conquer cannot by this conquest lose their laws, which are their birthright, and which they carry with them wherever they go. Calvin's Case is then cited, with emphasis in its distinctions between heathen and Christian conquered countries. The experience of Ireland is used to point out an analogy between that and the situation of Jamaica.<sup>4</sup>

The Court held, in part:

1. In case of an uninhabited country newly found out by English subjects, all laws in force in England are in force there: so it seemed to be agreed.
2. Jamaica being conquered and not pleaded to be parcel of the Kingdom of England but part of the possessions and revenue of the Crown of England, the laws of England did not take place<sup>5</sup> there, until declared so by the conqueror or his successors. . . .

<sup>3</sup> The Conquest did not take place, of course, until Cromwell's time, in 1655. An attack was made in Elizabeth's reign, in 1596, under Shirley, but this was not followed up. See Preface to *The Importance of Jamaica to Great Britain Considered*; London, 1741? This tract deals rather lightly with Constitutional History.

<sup>4</sup> See below p. 28.

<sup>5</sup> 4 Modern 215 ff. Salkeld 411.

That Jamaica was alleged to be a conquered country caused upon other occasions, some of which we shall notice later, considerable difficulty in determining the legal system of the island. The decision, it seems, is adverse to the extension of English laws, though the judges did not lay stress on the distinction between common and statute law.

A clearer statement appears in the opinion of the Attorney-General, West, rendered in 1720, in which he said :

"The common law of England is the common law of the plantations, and all statutes in affirmation of the common law, passed in England antecedent to the settlement of a colony, are in force in that colony, unless there is some private Act to the contrary; though no statutes, made since those settlements, are thus in force unless the colonists are particularly mentioned. Let an Englishman go where he will, he carries as much of law and liberty with him as the nature of things will bear."<sup>6</sup>

Nine years later, in connection with the dispute in Maryland, Sir P. Yorke, then Attorney-General, gave an opinion on the same subject, which affords an interesting comparison with that of West.

"Such general statutes as have been made since the settlement of Maryland, and are not by express words located either to the plantations in general or to this Province in particular are not in force there, unless they have been introduced and declared to be Laws by some Acts of Assembly of the Province, or have been received there by a long uninterrupted usage or practice which may impart a tacit consent of the Lord Proprietary and of the people of the colony that they should have the force of a law there."<sup>7</sup>

The modification here evident was without doubt a reflection of the agitation in Maryland to which we shall devote extended discussion hereafter.

<sup>6</sup> Chalmers' Opinions, Vol. I., pp. 194-195.

<sup>7</sup> Chalmers' Opinions, Vol. I., p. 206. Also in Calvert Papers (MS.) No. 52, p. 14. Chalmers dates this March 9, 1729. The Jamaican controversy referred to below had been settled in the meantime; while the controversy in Maryland had reached its height.

Passing over other cases, we come to the doctrine of the pre-revolutionary period as summed up by Blackstone,<sup>8</sup> who, upon this subject delivers himself as follows:

"Besides these adjacent islands [Man and the Channel Islands], our most distant plantations in America, and elsewhere, are also in some respects subject to the English laws. Plantations or colonies, in distant countries, are either such where the lands are claimed by right of occupancy only, by finding them desert and uncultivated, and peopling them from the mother country; or where, when already cultivated, they have been either gained by conquest or ceded to us by treaties. And both these rights are founded upon the law of nature, or at least upon that of nations. But there is a difference between these two species of colonies, with respect to the laws by which they are bound. For it hath been held<sup>9</sup> that if an uninhabited country be discovered and planted by English subjects, all the English laws then in being, which are the birth-right of every subject<sup>10</sup> are immediately there in force. But this must be understood with very many and very great restrictions. Such colonists carry with them only so much of the English law as is applicable to their own situation and the condition of an infant colony. Such, for instance, as the general rules of inheritance, and of protection from personal injuries. The artificial refinements and distinctions incident to the property of a great and commercial people, the laws of police and revenue (such especially as are enforced by penalties), the mode of maintenance for the established clergy, the jurisdiction of spiritual courts, and a multitude of other provisions, are neither necessary nor convenient for them, and therefore are not in force. What shall be admitted and what rejected, at what time, and under what restrictions, must, in case of dispute, be decided in the first instance by their own provincial judicature subject to the revision and control of the King in council: the whole of their Constitution being also liable to be new—modeled and reformed by the general superintending power of the legislature in the mother country. But in conquered or ceded countries, that have already laws of their own, the King may indeed alter and change these laws, but, till he does actually change them, the ancient laws of the country remain, unless such as are against the laws of God, as in the case of an infidel country.<sup>11</sup> Our American plantations are principally of this latter sort, being obtained in the last century either by right of conquest and driving out the natives (with what national justice I shall not at present inquire) or by treaties. And therefore the common law of England, as such, has no allowance or authority there, they being no part of the mother country, but distinct, though dependent dominions. They are subject, however, to the control of the parliament, though (like Ireland, Man and the rest), not bound by any acts of parliament unless particularly named."

<sup>8</sup> I. Blackstone's *Commentaries* (3rd ed. Cooley) Introduction, sec. 4, p. 107.

<sup>9</sup> Refers to Salkeld 411, 666.

<sup>10</sup> Refers to 2 *Pere Williams* 75.

<sup>11</sup> Refers to *Calvin's Case*, 7. Rep. 17. Shower's *Parliamentary Cases* 31 (Dutton v. Howell).

Lastly, the reader is referred to Mansfield's decision in the case of *Campbell v. Hall*.<sup>12</sup> Here the same general principles were stated more elaborately in six propositions, which need not be quoted at length upon the present occasion, as the time and place of the matter at issue lie too far from the limits described for this paper.

These opinions, judicial decisions, and the authority of Blackstone suffice to illustrate the legal theory with which we have to compare the claims put forth by the Maryland colonists. With the cases and decisions that come later, and with the modern classification of the British colonial system, we are not here concerned.<sup>13</sup> It must be remarked, however, first, that the opinions we have quoted show a process of development, and some lack of harmony; second, that while the principles as to extension which Blackstone lays down did, in American courts generally, become the accepted theory of the transfer of English law,<sup>14</sup> a different attitude was assumed towards his consideration of the American possessions as conquered territory; and thirdly, that as Reinsch has shown, the legal theory is not universally supported by the actual facts in the legal history of the colonies.<sup>15</sup>

As we have not undertaken any but the barest statement of this legal theory, so our reference to the experiences of other colonies must be of the briefest. While in every group of colonies incidents turned upon or called in question the same points as the Maryland controversy, and although no

<sup>12</sup> *I Cowper*, 204. See also the pamphlet mentioned above, p. 18, n. 1.

<sup>13</sup> For a general discussion of the later development of the theory see Burge W., *Commentaries on Colonial and Foreign Laws Generally*, and in their conflict with each other and with the Law of England. London, 1838. Here will be found the story of the proclamations of 1763—the Grenada judgment, etc. For Canada and the Quebec Case, see also Coffin. *The Province of Quebec and the early American Revolution*. See also Egerton, H. E.; *A Short History of English Colonial Policy*, ch. iv.

<sup>14</sup> *Van Ness v. Packard*, 2 Pet. 137.

<sup>15</sup> Reinsch: *English Common Law in the Early American Colonies*, *passim*.

complete discussion of this part of the subject exists, we shall on this occasion mention only two or three such happenings which are peculiarly fitted to help us understand the more limited field that we have chosen.

In 1651 the Colony of Virginia surrendered to the Commissioners of the Puritan Government in England. The first article of capitulation declares:

It is agreed and const'd that the plantation of Virginia, and all the inhabitants thereof, shall be and remain in due obedience and subjection to the Commonwealth of England according to the laws there established, and that this submission and subscription be acknowledged a voluntary act not forced nor constrained by a conquest upon the country, And that they shall have and enjoy such freedomes and priviledges as belong to the free borne people of England, and that the former government by the commissions and instructions be void and null.<sup>16</sup>

Here seems to be a conscious recognition of the "conquest" idea so emphasized in the decision just quoted. In Maryland itself, however, we have a still clearer example when, in 1684, in a debate between the Houses of the Assembly over the right of the Speaker to issue warrants for election to vacancies, the Proprietor's argument, in support of his own prerogative, that "the King had power to dispose of his conquests as he pleased," roused the ire of the Lower House, which asserted the rights of its members as based on their English origin. This was "their birthright by the words of the Charter." The word "conquest" had a sinister meaning which they resented, and they hoped that the words were the result, not of the Proprietor's own will, but of strange if not evil counsel. The Upper House at once explained that it had no idea of likening the freemen of the Province to a conquered people.<sup>17</sup> The discussion indicates that in Maryland, before the revolution of 1689, this legal theory was known and its application of this principle to Maryland denied.

The narrower question of the extension of the English stat-

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<sup>16</sup> Hening: *Statutes at Large* I., p. 363-4. Cited in part in Snow: *The Administration of Dependencies*, p. 115, and as a whole in Hart: *American History Told by Contemporaries* I., pp. 235-6.

<sup>17</sup> Sparks, *Causes of the Maryland Rev. of 1689*, p. 82 Md. Arch. III. Ass. Pro. pp. 124-125.

utes had been broached in many other plantations. One or two instances will suffice for illustration. In 1692 the Assembly of South Carolina passed an Act authorizing the judicial officers of the colony to execute the Habeas Corpus Act—an Act passed some years later than the settlement of Carolina. This the Proprietors disallowed, however, declaring that all laws of England applied to the colony, and holding that it was therefore unnecessary to re-enact that famous statute in their Province. "By those gentlemen's permission that say so, it is expressed in our grants from the Crown that the inhabitants of Carolina shall be of the King's allegiance, which makes them subject to the laws of England."

Here we have a proprietary Province, of a constitution analogous in so many respects to Maryland, in controversy over this same matter; but the parties we find taking exactly opposite positions from that which they assumed, respectively, in Maryland. However, the Proprietors here receded from their position, and, in 1712, approved an Act which adopted the English common law and such statutes as were deemed applicable to the Constitution of the Province.<sup>18</sup> A somewhat similar law was passed in North Carolina, in 1715.

Of more direct bearing upon the course of events in Maryland is the experience of her northern neighbor, Pennsylvania, where legal controversies similar to that which we have to follow in Maryland were taking place just a few years before 1722. The efficacy of the English statute law, in comparison with that of local legislation, came up in connection with the unwillingness of the Quakers to take an oath, and their claim that an affirmation was equally valid for legal proceedings.<sup>19</sup>

More closely analogous to the issues developed in Maryland, however, was the evolution of the courts of judicature in Pennsylvania. In the course of a contest between Governor

<sup>18</sup> McCrady E. The History of South Carolina under the Proprietary Government, pp. 247-8, 517ff. Reinsch, English Common Law, pp. 49-50.

<sup>19</sup> Shepherd, W. R.: History of Proprietary Government in Pennsylvania, Columbia University Studies in History, Economics and Public Law, Vol. VI., pp. 351-369.

Evans and the Assembly, the former issued an ordinance to establish courts; in which the judges were directed to hear and determine cases "as near as conveniently may be to the laws of England, and according to the laws and usages" of the Province. In equity cases, they were to "observe" as near as may be the practice and proceedings of the High Court of Chancery in England. Against this establishment of courts by ordinance the Assembly remonstrated, but to little purpose, and the quarrel dragged on through subsequent administrations.<sup>20</sup> The constitutional points in dispute lie without the scope of our consideration, but the reference to the laws of England concerns us directly.

Furthermore, in 1718, Governor Keith and the Council fell out over the commissions of the judges. Should they run in the name of the Governor merely—as had been the case—or should they not rather run in the name of the King, with the Governor's attestation? In supporting the latter view, the Governor argued that the judges were the King's judges; and that the Proprietor had only the right of naming them, and he urged the example of Durham, where by Act of 27 Henry VIII. ch. 24, the power of appointment was taken from the Bishop and vested in the Crown.

"In reply," says Shepherd, "the Council stated that the difficulty had arisen in not distinguishing the difference between England and 'new colonies made without the verge of the ancient laws of that Kingdom.' As the King could give power to subjects to transport themselves to the dominion of other princes, where they would not be subject to the laws of England, so he might allow them to go to any foreign country upon any conditions he might choose to prescribe. Furthermore, since the native Indians, who inhabited these newly discovered American lands, were not subject to the laws of England, 'those laws must, by some regular method, be extended to them, for they cannot be supposed of their own nature to accompany the people into these tracts in America' any more than into any other foreign place. The King, by his charter, had given the proprietor and the people full power to enact laws not repugnant to those of England, but 'without extending any other than such as were judged absolutely necessary for the people's peace and common safety till such time as they should think fit to alter them.'"

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<sup>20</sup> Shepherd: Proprietary Government in Pennsylvania, pp. 386 ff.

Continuing, they urged that precedent was upon their side in other colonies as well; and upon this occasion Keith yielded to their claims.<sup>21</sup>

Thus we see that public sentiment was on the side against extension. In line with this feeling, the Assembly, in 1718, passed an Act definitely extending several English penal statutes, which greatly altered the milder ideals of William Penn's early legislation. The necessity for this, Shepherd suggests,<sup>22</sup> was the advantage taken by many law-breakers of the privilege of affirmation instead of swearing oaths. In the passage just cited, the argument was not technically legal, but in the preamble to this Act the Assembly said:

"Whereas it is a settled point that as the common law is the birthright of English subjects, so it ought to be their rule in British dominions; but Acts of Parliament have been adjudged not to extend to these plantations, unless they are particularly named in such acts."<sup>23</sup>

Here is a clear-cut statement of the "orthodox" theory as to extension, exactly similar in tenor, it will be noticed, to the opinion of West in 1720, given above. Since it is easy to prove that contact between Maryland and Pennsylvania was continuous, and that the politics of the latter exerted a decided influence on those of the former, it is not unreasonable to suppose that this discussion in Pennsylvania, which occurred when discussion on the same point in Maryland was inactive, had something to do with the revival of the quarrel in Maryland in 1722. This hypothesis is helped by the emphasis that we shall find laid by Dulany and his party on the Commissions of the Judges. It is the more remarkable, as the latter argued precisely in opposition to the ideas of the Council in Pennsylvania.

A far more striking analogy appears in the history of Jamaica, to which the case of Blankard vs. Galdy has already led us. We found it there claimed and adjudged that Jamaica

<sup>21</sup> Ibid., pp. 386-7.

<sup>22</sup> Ibid., pp. 388-389.

<sup>23</sup> Ibid., p. 390.

was a conquered Province; but, as we might suppose, the English inhabitants of the island denied that they represented the conqueror. The military seizure of the island and its cession by Spain did, however, introduce this additional complication into the whole of Jamaica's constitutional history. Moreover, Jamaica was a Crown colony, and had no charter. The instructions and proclamations of Cromwell and of Charles II. were liberal, however. In the time of the latter, especially after the period of military rule had reached a conclusion, the progress of the colony towards a constitutional development like that of the other American colonies was constant. But in 1678, upon objections by the lords of the Committee for Trade, the royal government rejected some of the Jamaican laws, and went so far as to urge that the laws for the island must be made in England, then sent to Jamaica for passage by the Assembly, after the manner of Irish legislation under Poyning's Law.

This reactionary attempt of the Crown to compel the civilian was opposed and rejected by the Jamaican Assembly. Then ensued a long wrangle, which left it in great doubt what laws were in force and what not. A temporary agreement as to the practical difficulties was reached in 1684. But the claim of the colonists to the English laws—not only to those passed before the settlement, but to some, like the Habeas Corpus Act, passed after it—was denied by the King in Council and by the courts.

The Jamaica Assembly went farther than that of Maryland, in that they entangled with this controversy the question of levying the public money, and refused to pass a law to grant a perpetual revenue until the Crown would fully admit the rights they demanded. This the Crown for a long time refused to do; but at last, in 1728, the Assembly

"Settled a permanent revenue, not burthensome to themselves. . . . In return for this they obtained the royal confirmation of their most favourite and necessary Acts of Assembly, and the following declaration expressed in the 31st clause of this revenue Act.

"And also all such laws and statutes of England as have been

at any time esteemed, introduced, used, accepted or received as laws, in this island, shall and are hereby declared to be, and continue, laws of this his majesty's island of Jamaica forever!

" This clause is justly regarded by the inhabitants as the grand charter of their liberties, since it not only confirmed to them the use of all those good laws which originally planted and supported freedom in England, but likewise of all the other provisions made for securing the liberty and property of the subject in more modern times; when, upon the several overthrows of tyrannic powers in that Kingdom, the subjects' rights were more solidly fixed on the rational basis of three solemn compacts between the sovereign and people: at the Restoration of Charles II., the Coronation of the prince of Orange, and, lastly, the accession of the House of Hanover.

" The little clause before recited has cost the island, in fifty years, about £50,000, the net income of the revenue being about £10,000 *per annum*. Yet, considering the unspeakable benefits derived by them in virtue of this compact, they do not think it too dear a purchase."<sup>24</sup>

Such was the controversy in Jamaica, thus contemporaneous in part with that conducted by Dulany in Maryland. That the Jamaican affair was studied in Maryland will appear below, where we shall find the Proprietor, in 1724, citing the failure of the Jamaicans in one of their attempts to get their English laws. Five years later, in the Maryland Gazette, a letter from Jamaica announces the probability of an agreement. This Act " has been at home near a year " and " cannot well fail of being confirmed, being exactly conformable in the substance to the draught sent hither from home."<sup>25</sup>

At the time, therefore, when Dulany began his decade of agitation in Maryland, there was, in the first place, a theory or tradition established in the English courts; a tradition not yet distinct, but approaching definiteness. Secondly, there had been frequent occasions in other colonies where the

<sup>24</sup> Long, Edward: 'The History of Jamaica, London, 1774. Vol. I., pp. 219-20. The account of Jamaica as a whole is based on the Appendix to the Tenth Chapter of Long's very valuable work; on a pamphlet entitled *The Privileges of the Island of Jamaica Vindicated*—reprinted in London, 1766, with an appendix; and on the opinion of Yorke and Wearg, the Attorney and the Solicitor-General, as to the legal constitution of Jamaica in 1722-25, Chalmers' Opinions (Colonial. Edition of 1814, Vol. I., pp. 204-224). See also Lord Mansfield's decision in *Campbell v. Hall*.

<sup>25</sup> Maryland Gazette, June 10-17, 1729. The Jamaican letter is dated March 5.

relations to the legal system of the mother country were matters of dispute. Lastly, the uncertainty in Maryland was as old as the colony. With these points in mind, we may perhaps sympathize with "An American," who in "An Essay on the Government of the English Plantations," published at the beginning of the eighteenth century, voiced his complaint that

"No one can tell what is law and what is not in the plantations. Some hold that the law of England is chiefly to be respected, and, when that is deficient, the laws of the several colonies are to take place. Others are of the opinion that the laws of the Colonies are to take the first place and that the laws of England are in force only where they are silent. Others there are who contend for the laws of the colonies, in conjunction with those that were in force in England at the first settlement of the colony, and lay down that as the measure of our obedience, alleging that we are not bound to observe any late acts of parliament in England except such only where the reason of the law is the same here that it is in England."<sup>28</sup>

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<sup>28</sup> Quoted in Lincoln: The Revolutionary Movement in Pennsylvania, pp. 117-118. Compare also the section on the Civil Jurisdiction in a Short Discourse on The Present State of the Colonies in America. This pamphlet is No. 6 in A Collection of Papers and Other Tracts, by Sir William Keith, London, 1779 (2nd ed.). This pamphlet, No. 6, was presented to the King in 1728, and thus is contemporary with the struggles in Maryland and in Jamaica.

## CHAPTER III.

### THE TEN YEARS' CONTROVERSY, 1722-1732, AND THE FINAL POSITION OF THE ENGLISH STATUTES IN MARYLAND LAW.

The ten years, 1722-1732, constitute the most important phase of the controversy over the English statutes. Back of the strife over this particular matter lay the general state of the public mind, which has been described at some length in the paper, "Economics and Politics in Maryland." In contrast with most of the issues then agitated—which to a large degree were connected with agricultural discontent—this was a question in which no material profit or loss was involved. It was purely legal, and the endeavor was to establish as a general rule what in some particular cases was not denied. A review of the circumstances then existent shows how favorable the opportunity was for political leadership; and that such leaders were forthcoming in the lawyers of regular training who, in spite of the Assembly's jealousy as to their pecuniary emolument, were then leading that body to one end or another.

The man who stirred up this matter fresh and gave to it the legal talents which won him place and fame was the Attorney-General of the Province, Daniel Dulany, the elder. For his career in respects other than this, the reader is referred to the former paper. He began his service in the Assembly in 1722, and at the same session, as head of the Committee of Laws, made the conduct of this controversy with the Proprietor his especial charge. In 1732 the dispute closed with a compromise, and the next year Dulany went over to an official career in the service of the Proprietor and no longer supported the country party. Meanwhile, through a routine of resolutions, addresses, reports, bills and proprietary vetoes the country party was kept united and insistent—for this purpose, at least—by an able and industrious commander.

It is necessary first to outline the legislative history of these years, then to trace at greater length the arguments urged in support of the position of the popular party—arguments which are found in documents largely by Dulany's hand or evidently inspired by him. Then the effects of these developments on later times will be related and described.

In 1712, a decision of the Provincial Court<sup>1</sup> had denied the extension to Maryland of one of the English Statutes of Limitation, 21 James I., ch. 16. Now, in 1722, the Assembly passed an Act definitely adopting this statute; but with the addition of language which declared the general extension of the English statutes.<sup>2</sup> This principle the Lower House now prepared to defend.

On October 25, it was proposed by a member, and resolved<sup>3</sup> by the House (1) that the standing Committee of Aggrievances should have likewise the character and duties of a Committee for Courts of Justice; (2) that they should be instructed to examine the commissions of the several justices, to ascertain whether any alterations or omissions had been made on the part of the commissions which directed the judges to try and determine cases before them according to the laws, statutes, ordinances, and reasonable customs of England and of this Province; (3) that they should examine also the phrasing of the oaths of office taken by the several magistrates and discover whether these oaths contained a form here declared to be necessary; (4) that these resolutions should be perpetuated by giving a copy of them to the committee at the beginning of every session. Then followed yet more impor-

<sup>1</sup> *I* Harris and McHenry, pp. 28-29. Philemon Lloyd's Lessee vs. Vincent Helmsley. The jury returned a special verdict, depending on the Court's decision as to the extension. The same situation is found two years later in July Term, 1714, in Wm. Clayland's Lessee vs. Daniel Pearce, *i* H. & M. 29-30. Here the Act of 29 Charles II., relating to frauds and perjuries was involved. The court again decided against the extension.

<sup>2</sup>Bacon: Laws of Md. Act of 1722, ch. 19.

<sup>3</sup> These resolutions may be found in the Manuscript Journal for that date; or more conveniently in the printed Votes and Proceedings published in 1725, pp. 2-3. They are given in full in the Appendix to this paper.

tant resolutions—to which constant reference will be necessary—which declared (5) that the Province was not under the circumstance of a conquered country; that if it were, the present Christian inhabitants were the conquerors, not the conquered; but that not even against the Indians was conquest the method of settlement. On the contrary, the lands were purchased—(6) that this Province had always hitherto had the common law and such general statutes of England as were not restrained by words of local limitation, and the Acts of Assembly—subject to the same rules of construction as those used by the judges in England. These rules had received the Proprietor's approval by the commissions given to their judicial magistrates except where such words had been casually or carelessly omitted; that whoever advised his lordship or his successors to govern by any other rules were evil counsellors—and (7) that these resolutions were not occasioned by any apprehension of infringement of their principles by the proprietors, but had the intent of informing their posterity as to the nature of their constitution.

The Upper House postponed consideration of these resolves, on the plea that they desired to consult the Attorney-General concerning them, and did not give their approval until two years later.<sup>4</sup>

Not many days later the session came to an end. When the Assembly next met, the Governor communicated to them<sup>5</sup> the dissent of the Proprietor to the Act of 1722. The letter of veto bore date of March 19, 1722 [3], and further required that this dissent should be recorded. The Governor was instructed, also, not to allow the passage of any Act for the introduction "in a lump" of the English statutes, which had always been held not to extend to the plantations unless by express words located thither. Any one or more found convenient for Maryland should be enacted *de novo*, in whole or in part.

<sup>4</sup> U. H. J. MS., Nov. 4, 1722. See below, pp. 34-5.

<sup>5</sup> L. H. J. MS., Sept. 25, 1723.

In response, the Lower House appointed James Stoddart, John Beale, and Daniel Dulany as a committee to examine into the provincial records and report on the facts as to the practice of extension in the past.<sup>6</sup> The committee reported October 18, asserting that precedents in favor of their position were ample, and basing their assertions on four kinds of evidence: the royal charter, Acts of the Provincial Assembly, commissions and instructions to officers, and judicial proceedings.<sup>7</sup> The Assembly followed this report by the adoption of an address to the Proprietor<sup>8</sup> which combated the principles enunciated in his instruction to the Governor, and developed the counter-claims made by themselves. Of this address an outline will be given hereafter.

With the session of 1724 the Lower House seems to have removed its contention from the Statute of Limitations to the broader and somewhat less definite ground of the judges' oaths. Upon the advice of the Committee of Grievances<sup>9</sup> the Attorney-General was instructed to prepare a form of oath which should be consistent with the principles expressed in the resolutions of 1722. This form he presented October 13.<sup>10</sup> When this went to the Upper House for consideration, the expression that the rule of judicature should be "according to the laws, statutes, and reasonable customs of England, and the Acts of Assembly and the usage of the Province," aroused criticism from that body, because it gave to the judges the power arbitrarily to select what statutes and customs were suitable. After considerable bickering the houses agreed to change the latter part of the phrase so as to read "Acts of Assembly, usages, and constitution of the Province."<sup>11</sup> Even thus the bill did not receive the Governor's assent. One result of the discussion between the Houses was the approval

<sup>6</sup> L. H. J. MS., Sept. 30, 1723.

<sup>7</sup> Printed Votes and Proceedings, pp. 10-11.

<sup>8</sup> Oct. 21, 1723. *Ibid.* pp. 17-22.

<sup>9</sup> Printed Votes and Proceedings, p. 39, Oct. 8.

<sup>10</sup> *Ibid.* p. 40.

<sup>11</sup> *Ibid.* p. 64.

by the Upper House of the resolutions passed by the Lower in 1722. Perhaps the most noteworthy document was another historical retrospect presented by the Committee on Grievances, which discussed especially the judges' oaths from 1692 to 1724,<sup>12</sup> and a letter written to the Governor by Dulany, to whom, as Attorney-General, the former referred the wording of the clause in the proposed oath, for his opinion as to its constitutionality.<sup>13</sup> It is impossible to believe that Dulany's leadership in the Lower House was not known, consequently the whole situation seems somewhat ludicrous.

The next Assembly—a new one—met in October, 1725, and made a violent attack on the privileged classes—the lawyers, the clergy, and the proprietary officers. The year was no less noteworthy in the statutes controversy. Perhaps as a campaign document for this Assembly, there was published in Philadelphia, by Andrew Bradford, a Selection of the Votes and Proceedings of 1722-4, bearing on the statutes controversy and the constitution of the Province, to which were prefixed, first, a translation of the charter of Maryland, and, secondly, a long anonymous "Epistolar Preface to the Maryland Readers,"<sup>14</sup> which urged the colonists to appreciate their his-

<sup>12</sup> L. H. J. October 18th, 1724.

<sup>13</sup> U. H. J. Oct. 31, 1724. "May it please your Excellency. The words proposed in the oath of a Judge (for the Letters of the King) being designed only to oblige the Judges according to the known and established rules of law without regarding any commands or other directions (even the King himself) to the contrary, I'm humbly of opinion can't possibly affect his Lordship, in his prerogative or any other way, but on the contrary shew that regard to the equal and indifferent administration of justice to the people in putting the judges under the most sacred ties to discharge their duty that is one of the distinguishing characteristics of a good ruler. May it please your Excellency, Your most humble servant,

D. DULANY."

<sup>14</sup> This "preface," the general character of which makes it seem probable that it was written by Dulany, speaks first of the lack of publication of the "parliamentary proceedings" of Maryland, and the resulting ignorance of the constitution of the Province, which makes "the character of a great Commoner, so much esteemed in England . . . here unknown, or useless." The author then vigorously combats the charge of innovation which has been brought against his party. On the contrary they are striving for the rights the Province has always had, which are English liberties.

toric rights and liberties, and indulged in a slap at the clergy. The appearance of the printed pamphlet in politics, the connection with Pennsylvania where party strife at this time was so active, and the language used—all are very significant.

The Governor opened fire<sup>15</sup> with a long letter from the Proprietor, which he supplemented by some remarks of his own. The Proprietor's brief was in effect an answer to the Assembly's address of two years before, and declared that the ideas of the Lower House as to the extension of English laws were wrong. Jamaica precedents were cited, and the colonists were urged to enact for themselves the English statutes they wanted. Finally the Proprietor exhorted them to peace—to stop quarreling with the Upper House over the latter body's salary as a council.

In answer the Lower House readopted the resolution of 1722; then the Committee of Laws, headed by Dulany, brought in another address, which for legal ability shown in its composition is perhaps the best of the whole group. Adopted by the Assembly,<sup>16</sup> it emphatically reasserted to the Proprietor the position of the popular party. Of this, as of the Proprietor's letter, detailed description will be reserved till later. Besides this manifesto of the Lower House, the Upper, also, now presented an address to Lord Baltimore.<sup>17</sup> This fact indicates that Dulany had really commanded the attention of the people of the Province of higher as well as lower estate. Thus in agreement the two houses passed an-

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To those who wish specific information as to these is recommended "the little book last published, entitled 'English Liberties.' Next is presented, as a quotation, a letter signed 'Sebastian,' addressed to a clergyman, in which the cause of the irreligion that exists is laid to the want of belief in revealed religion. It is hinted also that the clergyman should set a better example in his own life; and to him is recommended the little book entitled 'A Short and Easy Method with the Deists.' These two books are recommended to those gentlemen who send yearly to England for their goods, 'even if they send for five or six ounces of tea the less.'" "English Liberties" was written by Henry Care, in or before 1719, and "A Short and Easy Method" is the work by Leslie.

<sup>15</sup> L. H. J. MS., Oct. 5, 1725.

<sup>16</sup> L. H. J. MS. Oct. 8.

<sup>17</sup> U. H. J. MS. Nov. 5, 1725.

other oath bill, which the Governor approved, but which, shortly after this, was vetoed by the Proprietor.<sup>18</sup>

A year seems to have passed without further developments of importance. Then, in 1727, we find another printed edition of Votes and Proceedings; this was printed at Annapolis, by William Parks, and included chiefly the transactions of 1725—another report of the Committee of Aggrievances, another discussion between the Houses, another Act passed, and another veto.<sup>19</sup>

Then came three years of excitement, the last of Governor Calvert's régime; the events of which have been described in the first two chapters of the former paper. Besides the political strife, the appearance of the Maryland Gazette and other publications may be recalled. During this same period the statutes controversy reached its crisis, and shortly after, its conclusion. To the Assembly, upon its meeting, was announced the dissent of Lord Baltimore to the Oath Law of 1727, and, as if to meet them half way, offered the Proprietor a form of oath which he suggested as more appropriate. This read "according to the laws, customs, and directions of the Acts of Assembly of this Province, and, when they are silent, according to the laws, statutes and reasonable customs of England as have been used and practised in this Province."<sup>20</sup>

The Lower House would have none of this, because of the obnoxious past tense of the words "have been." By such words they would be shut out from future statutes which might be of benefit to them,<sup>21</sup> and from past statutes which might perhaps not have been "used and practised" before a court, while endless disputes might arise as to whether any particular Act had been used. Again, Dulany and the Committee of Laws made a report; again, the former drew up for the House an address to the Governor. Another law and

<sup>18</sup> Bacon: Laws of Md. Act of 1725, ch. 1.

<sup>19</sup> L. H. J. MS., 1727, *passim*. Bacon: Laws of Md. Act of 1727, ch. 1.

<sup>20</sup> L. H. J. MS. 1728, Oct. 4.

<sup>21</sup> L. H. J. MS. 1728, Oct. 5.

another veto followed.<sup>22</sup> In view of this third dissent in this one matter, and not to speak of the numerous negatives to other laws of the same period, we are not surprised to find the Lower House passing a resolution against the use of this power,<sup>23</sup> a power which, we must remember, the Crown had ceased for some time to employ in England. This had no effect, apparently, upon the Proprietor, for a fourth attempt to find a form agreeable to him met with the same treatment. This was an Act of 1730, in which the words ran "according to the reasonable customs of England and the laws and statutes thereof as are or shall hereafter be enacted agreeable to the usage or constitution of this Province." He was specially urged by both Houses to assent to this, but to no avail.<sup>24</sup>

Meanwhile had appeared from the press the most important of all the writings which the controversy drew forth. This was Dulany's "The Right of the Inhabitants of Maryland to the Benefit of the English Laws," and to it we shall hereafter devote separate consideration. A comparison of dates makes it not improbable that to the agitation of these years, and, perhaps, to the influence of Dulany's pamphlet, is to be ascribed the somewhat more liberal opinion of Yorke, in 1729. This, as we noted in the preceding chapter, contains in its phrases a distinct air of concession.

The next year brought to the government the good sense of Samuel Ogle. No wonder that he wrote home to tell Lord Baltimore that the country was "as hot as possible about the English statutes and the judges' oath,"<sup>25</sup> or that he recommended giving places to "Bodeley and Delany."<sup>26</sup> Before this, the uncertainty in the matter had led to great confusion, some officers taking one form of oath, others another. Now some refused to take any.<sup>27</sup> In 1731 another oath bill was

<sup>22</sup> L. H. J. MS. 1728, *passim*. Bacon, *Laws of Md.*, Act of 1728, ch. I.

<sup>23</sup> L. H. J. MS. 1729, Aug. 5.

<sup>24</sup> *Ibid.* 1730, *passim*. Bacon, *Laws of Md.*, Act of 1730, ch. I.

<sup>25</sup> Calvert Papers (*printed*), Vol. II., p. 82.

<sup>26</sup> *Ibid.* p. 85.

<sup>27</sup> Mereness, p. 276.

passed, but the Governor withheld his consent.<sup>28</sup> Next year he carried into this controversy the same conciliatory policy which he made his general rule of conduct; told the Assembly that "the Proprietor and the country aim at the same thing"—the good of the Province; and then accepted a bill which, drawn in a joint conference,<sup>29</sup> was accepted by all parties and became and remained law.<sup>30</sup> In this law the important phrases of the oath ran as follows:

" You shall do equal law and right to all the King's subjects, rich and poor, according to the laws, customs and directions of the Acts of Assembly of this province so far forth as they provide; and when they are silent, according to the laws, statutes and reasonable customs of England, as used and practised within this province."<sup>31</sup>

When Charles Lord Baltimore, next year, visited the Province, and, for a while, ruled in person, he permitted Governor Ogle's law to stand; and as he went out of his way to placate the opposition, and detached many of the leaders, including Dulany, by giving them places in the governmental system, an epoch of good feeling existed for awhile.<sup>32</sup> This was short-lived, and soon new or old causes of strife again made relations between Proprietor and people somewhat strained. The extension of the statutes, however, never again became the subject of continued contention. If the Proprietor did not withdraw his instructions to the Governor not to pass a bill for general introduction of the statutes, the Lower House did not repeal or withdraw their resolutions; and from time to time declared that same statute was in force.<sup>33</sup>

What, then, was the outcome of this long and tiresome controversy? At first sight—nothing! But for answer, let us quote the opinion of the judicious McMahon, who looked at this whole question with sympathetic and calm insight:

<sup>28</sup> Ibid.

<sup>29</sup> L. H. J. MS. 1732, July 22. Dulany heads the list of members representing the Lower House.

<sup>30</sup> L. H. J. MS., July 31, 1732. Act of 1732, ch. 5.

<sup>31</sup> L. H. J. MS., July 22, 1732. Bacon, Laws of Md., Act of 1732, ch. 5.

<sup>32</sup> Economics and Politics, ch. ii., end, and ch. iii.

<sup>33</sup> Mereness, p. 211; L. H. J. Oct. 18, 1753.

"The controversy thus terminated in partial submission to the will of the proprietary, but the Lower House had accomplished all their purposes. They had not only brought about a recognition of their right to such of the statutes as had been adopted in the practice of the province; but they had also couched this recognition in such general terms, as to permit the future introduction of English Statutes. The words "*as used and practised*" in this act, might relate either to what had been the usage and practice of the province in adopting English statutes, as a practice sanctioned and to be continued, or to the previous use and practice of these statutes as a test of their applicability; and even if the latter construction were adopted, the practice which was to give them efficacy, was not by the express terms of the act a practice anterior to its passage, but only to the time of the application of the statute as a rule of judicature. This subterfuge accomplished all its purposes; for from that period to the revolution, the courts continued to exercise the power of adopting and giving effect to such statutes as were accommodated to the condition of the province without regard to the enquiry whether they had been practiced upon or enacted previously to the Act of 1732."<sup>34</sup>

Here, however, McMahon does not sufficiently emphasize the fact that difficulty might arise from the old uncertainty as to what statutes had been used and practised. This difficulty, of course, was not so great as in the earlier days, because the legislation of the Assembly had attained so much more towards completeness. It was felt, however, as Mereness points out,<sup>35</sup> in the criminal law, who cites a communication made to the Lower House in 1771 by Governor Eden. From this we learn that some persons convicted on some English statutes had been discharged with impunity, because the extension of these was doubted, with encouragement to crime as a result.

With the Revolution the authority of the British Government came to an end. But, when a new constitution was to be formed, the old question presented itself in a retrospective manner. The fondness for English precedents still remained, and the Bill of Rights, sec. 3, declared that the inhabitants of Maryland were "entitled to the benefit of such English statutes as existed at the time of the first immigration and which

<sup>34</sup> McMahon, pp. 127-128.

<sup>35</sup> Mereness, Maryland, p. 277. Steiner: Life and Administration of Sir Robert Eden, Johns Hopkins University Studies in Historical and Political Science, Series XVI., p. 48 [382].

by experience have been found applicable to their local and other circumstances and of such others as have since been made in England or Great Britain and have been introduced, used, and practised by the courts of law or equity."

But just which statutes were these? This period of transition, it seems, should have been just the time to prepare a list of those that had been applied or were applicable. In the neighboring State of Virginia the work of Thomas Jefferson and his associates<sup>36</sup> was gradually embodied in a code, the contents of which included a selection of English statutes which were declared to be adopted and in force.

In Maryland the old state of things remained. Between then and the time of McMahon's book, various resolutions had passed in the Assembly looking towards the establishment of greater definiteness. The chief result was the collation made by William Kilty, the Chancellor, in pursuance to a resolution of 1809. Kilty's work classified the English statutes, from Magna Charta to 1773, into (a) those not applicable, (b) those applicable but not proper to be incorporated into the statute law of the State, and (c) those both applicable and proper to be incorporated. This collection was helpful because of its information, and as these statutes were not formally adopted by the Legislature, Kilty's book came to be regarded as an authority in this direction. As the Court said, in *Dashiell v. Attorney-General*, it was "a safe guide in exploring an otherwise very dubious path."

McMahon refers also to a chart prepared by Alceaus B. Wolfe, of Baltimore, which attempted to illustrate the statutes fit for incorporation.<sup>37</sup> The text of the statutes found "applicable and proper" by Kilty was edited with copious and scholarly notes by J. J. Alexander,<sup>38</sup> whose work in default of

<sup>36</sup> Jefferson's Writings (ed. T. J. Randolph, 1830), Vol. I., pp. 34 ff. The Writings of Thomas Jefferson (ed. P. L. Ford), Vol. I., pp. 58-60. <sup>37</sup> McMahon, p. 130.

<sup>38</sup> Alexander J. J. A Collection of the British Statutes in Force in Maryland according to the Report thereof made to the General Assembly by the late Chancellor Kilty, with Notes and References to the Acts of Assembly and the Code, and to the principal English and Maryland Cases: Baltimore, 1870.

legislative adoption is accepted as very influential by the courts of Maryland. So that McMahon's conclusion is still true. "The English statutes thus introduced by colonial usage, and resting upon it alone for their efficacy even at this day, may truly be called the *common law of Maryland.*"<sup>39</sup>

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<sup>39</sup> McMahon, p. 131. The history of the Adoption of English Law in Maryland since 1776 is given in an article by Bernard C. Steiner in 8 Yale Law Journal 353 (May, 1899). The Constitution of 1851 claimed the "benefit of such English statutes as existed on the fourth day of July, 1776; and which, by experience, have been found applicable to their local and other circumstances, and have been introduced, used and practiced by the Courts of Law and Equity." The Constitutions of 1864 and 1867 repeated these words. It will be noted that the two classes of statutes referred to in the Constitution of 1776 have been reduced to one.

We may also note that in the case of the State v. Buchanan (5 H. & J. 356) the Court claimed that the settlers were "in the predicament of a people discovering and planting an inhabited country" and that they were neither conquerors nor conquered. Further decisions on this point in the Maryland courts are discussed in Steiner's article.

## CHAPTER IV.

### THE ARGUMENTS IN THE DEBATE OF 1722-1732.

If the sources for the eighteenth century history of Maryland, or even that part of them found in the Journals of the Assembly, were accessible in printed form, this chapter could be materially abbreviated. But the documents which illustrate the arguments pro and con in the controversy just outlined exist almost exclusively in manuscripts and, as these arguments are the life of the dry narrative that constitutes the last chapter, we must endeavor at this point briefly to sum up several of the more important.

We shall consider, then, first, a few reports and addresses which appear in the records of the Assembly; second, to show its relation to these, the pamphlet by Daniel Dulany; and third, the notes upon the controversy found in the writings of one of the ministers of the Established Church in the colony of Maryland.

First among the documents which present the arguments of the country party come the Resolutions of 1722. These we have already outlined. The most important are those of the second group, which present a clear statement of the claim that the colonists had in the past enjoyed the extension of the general English statutes—that is, those not restrained by words of local limitation; and the paragraph to which special notice should be given is the one which emphasizes the idea that the Province was not a conquered country even as against the Indians; while, if it were, the English inhabitants would be the conquerors, not the conquered.<sup>1</sup> But part of the resolutions of 1722 provide for their perpetuation; they have a further history that will be discussed hereafter.

In reply to this, we have the statement of the Proprietor,

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<sup>1</sup> Above, pp. 32-33. For the resolutions in full, see Appendix I.

based on the authority of the courts, which flatly denies the popular assertion.<sup>2</sup> Thus the argument begins with these expositions of the respective parties.

Then follows the report of the special committee to examine the records, which tells the Assembly that precedents in favor of their view abound. They quote the royal charter, though here they rather miss the point; the Acts of Assembly, commissions and instructions to officers—a constant source of argument throughout the rest of the controversy—and judicial proceedings.<sup>3</sup> Following this report, the Lower House adopt their first address to the Proprietor.<sup>4</sup> To this a few more words may be devoted.

With reference to the Act of Limitation, the country party seemed to be lacking in precedents; they argue back, therefore, to the general thesis that it must extend because it is not limited. In support of this general proposition, we find the first citation, at least in this dispute, of the case of Blanckard vs. Galdy, in which connection the writer of the address hastens to point out that Maryland's claim to English laws is better than that of Jamaica, for Maryland is not a conquered country. Then the address brings forward an argument with which we shall become familiar. If English statutes do not extend to the colonies except by express wording to that effect, how can Magna Charta or other statutes which protect the rights of the subject, passed before the grant of the Maryland charter, extend thither? This is used as a *reductio ad absurdum*. Finally, in answer to the Proprietor's advice to enact *de novo* the statutes that they want, they urge the great practical difficulty and expense in such a plan. The address closes with professions of loyalty to the Proprietor and to the Crown.

The report of the Committee of Grievances, in 1724, may be passed over, for it was chiefly historical, reviewing past commissions and claiming that present ones were faulty in dic-

<sup>2</sup> Above, p. 33.

<sup>3</sup> Above, p. 34.

<sup>4</sup> Ibid.

tion.<sup>5</sup> Thus we come to the session of 1725, and to the manifesto sent by the Proprietor through the medium of the Governor. Now, the Proprietor made no such curt and dogmatic denial of his opponents' position, as he had done in 1723. Instead, his statement was long, carefully prepared, and argumentative in tone. He disclaimed any intention to deny that the Marylanders were "His Majesty's subjects" or to assert that their Province was a conquered country. Pointing out the antiquity of the question at issue, and the failure of the Assembly to settle it in the past, he returned to the basis of authority and the adverse opinions of the best lawyers in England.

Moreover, he cited certain Acts which logically came under the claims of the colonists, but which were known *not* to extend to the colonies. The first adduced is the Habeas Corpus Act. This has "often been adjudged by all the judges not to extend either to Ireland or the plantations, which is as strong a case as can be mentioned, as it is in favor of liberty and the terms of the Act as general as can be."

Along with the Habeas Corpus Act the Proprietor mentions the Statute of 5th Elizabeth "about servants,"—which, if extended to the plantations, "would be destructive to the very being and constitution of them"—the Statute of Usury, and that to prevent frauds and perjuries,<sup>6</sup> and many others which have been expressly and often held not to extend to the plantations, when doubted, either by the courts of law, or before the King and Council, and yet these are general laws of equal obligation with any other law or statute whatever.

From the presentation of Acts which refuted the assertion of the country party, the Proprietor turned to their argument from *Blankard v. Galdy*. He

"little thought to find a position introduced with that solemnity to be only the saying of a single counsel, on one side of the question, in opposition to the averment of the counsel on the other

<sup>5</sup> Above, pp. 34-5.

<sup>6</sup> The argument from these acts seems to be taken from *Blankard v. Galdy*, as reported in 4 *Modern*, 222-3.

side and contrary to the resolution of the Judges in that very case, viz. that Jamaica was not bound by our laws unless particularly mentioned therein, but by their own particular laws and customs." The charter of Maryland made full provision for legislation, and the inhabitants "will find it, I believe, your Happiness, if the Statutes of England, not expressly located thither, are not in the gross in force among you."

These two lines of argument were in answer to those submitted by Dulany and his followers. Now, a third is initiated by the Proprietor, with an evident idea of special impressiveness.

"I cannot but observe to you, at this time, what his most gracious Majesty has been pleas'd to do, in relation to the English Statutes taking place in the Plantations, in a particular case of Jamaica, where an act was lately made, instituted an Act for making his Majesty's Revenue Perpetual, and augmenting the same, and continuing and declaring what Laws are in Force in this Island." This act was disallowed by the King and Council on the advice of the Commissioner of the Treasury and the Commissioner of Trade and Plantations and the Attorney and Solicitor-General "for that the said Act might possibly introduce the whole body of the English laws to become laws of Jamaica, in cases not particularly provided for by laws of their own, which in many cases were by no means competent, but might be a great mischief, and be attended with many inconveniences, both to his Majesty's government in that island and to the estates and commerce of his Majesty's subjects there."<sup>7</sup>

The Maryland resolutions are therefore in error. At the time of this decision it was recommended to His Majesty to allow the Jamaicans to enact *de novo* the particular statutes suitable to them. The same privilege, the Proprietor declared, he offered to the inhabitants of Maryland.<sup>8</sup>

Thus far, the Proprietor might be said to have the best of it. He had adduced high legal authority in favor of his position; he had cited examples to disprove the colonial argument; and he had quoted a recent case which represented a legal parallel to the situation in Maryland.

He was dealing, however, with one whose reputation for legal ability was not unfounded. In reply to Baltimore's letter, the Committee of Laws prepared for the Lower House

<sup>7</sup> This one of the many attempts by the Jamaicans failed; but in 1728 they were successful to some degree. See above, chapter ii.

<sup>8</sup> Above, p. 36.

another address, brought in October 8th, 1725. After polite introductory remarks, this address repeated what was apparently the battle-cry of the country party, that Maryland was settled by occupation and not by conquest—and then started in for rebuttal.

First, the Proprietor was told that the Assembly was aware of the adverse opinions of lawyers with respect to the other plantations, but knew of no controversy in this except this with His Lordship.

Secondly, the Habeas Corpus, the Statute of Laborers, and the Statute of Frauds and Perjuries are taken up, and the arguments of the Proprietor are met in a manner skillful if not convincing. This point is of the more interest, as the Habeas Corpus Act was that, of all others, over which the colonies generally expressed interest. The result was the strong assertion that the Act did not extend to the plantations: and in Virginia we find this theory put into practice, when the Act is definitely extended to a particular colony by the somewhat doubtful method of a royal instruction. It is with some interest, therefore, that we turn to Dulany's handling of this matter.

The Habeas Corpus Act, the Proprietor had said, was a general Act, and yet did not extend to the plantations. On the contrary, says Dulany, it has *as express words of local limitation* as any statute—especially in the eleventh and twelfth paragraphs. The damaging authority of this law thus weakened, Dulany proceeds to avoid the admission that Maryland does not enjoy its privileges. *They* do claim this statute, for it gives privileges to Englishmen, and the *charter* expressly grants them all the liberties, franchises, and privileges of Englishmen, with a general *non obstante*. This statute was put in practice here while the Crown governed, and is, by a common-law construction, easily reconcilable here. This is argued at length; then it is once more urged that the fact that the Act does not extend to other plantations must not argue against its extension to Maryland, unless the other

plantations are shown to have the same charter and like privileges.

In the case of the Statute of Laborers, they have an Act of their own, likewise in the case of the Statutes of Usury, which they "hear are disused in many parts of England." The Statute of Frauds and Perjuries is used here. These and all other statutes are under the rules of common law that are used by the judges in construing statutes in England, except such statutes as are in favor of privilege, which, whether located or general, are expressly granted by the charter.<sup>9</sup>

From the discussion of the Habeas Corpus Act and the other statutes, the address proceeds to a further consideration of the case of Blankard vs. Galdy. The Proprietor had accused the Assembly of quoting only counsel on one side. Dulany admits this, but retorts that this was not denied by the other, and that the Proprietor is mistaken in his quotation. In his error there are two parts. First, the adverse judgment was not upon the Statute of Limitations but another; and, secondly—and of greater importance—reference to Salkeld's report of the case shows that the first resolution of Lord Holt and the whole court declared the extension of all laws in force in England to an uninhabited country, newly found by English subjects. This, moreover, was by common right, and not by charter. Now, a country inhabited only by savages is like an uninhabited country, with respect to the law of the new-

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\* The extension of the Habeas Corpus Act to the Colonies has been made the subject of a paper by Dr. A. H. Carpenter, in the American Historical Review for October, 1902, pp. 18-27. This contains no reference to the controversy in Maryland, except the citation of Yorke's opinion of 1729, which is left without comment. With reference to the other Colonies, the article furnishes a valuable narrative. The *Act* did not extend to the Plantations (except to Virginia, after 1710, through the royal proclamation of doubtful authority, and to S. Carolina, where the statute was re-enacted), but the Colonists claimed and used the Common Law right of Habeas Corpus, which they strengthened by provisions in their court laws, and by very strict bail laws, with heavy penalties for their non-fulfillment. The practice in Maryland was apparently similar, but Dulany's claims went beyond this.

comers; Maryland, therefore, lies within the scope of the resolution of the Chief Justice.

The Proprietor reminded them that they had a legislature of their own. This, Dulany replied, was for convenience, and did not remove their right to English laws, which they considered "a happiness." He proceeds:

"And we beg your Lordship to consider that your putting us in mind of the happy condition the Crown, by your charter, hath thought fit to place us under, which we ought quietly to submit to, is not an agreeable way of treating those you are obliged to for the success of your Province. It was no bounty in the Crown to place us here, unless we had not deserved longer to live in England, and that English Liberties were given us here, when we had forfeited our Right to them there. This would indeed have been a Bounty and very well have admitted a Proprietary in the Expression you use, 'That the Crown thought fit to place us under.' But we take leave to observe, That the Crown had no Right to give us other Conditions than in common with our Fellow-Subjects, nor to place us here or elsewhere, but by our own Consents. And we hope that you will not take it ill, that we again remind your Lordship, we are His Majesty's Subjects, and have equal Right with others to breathe British Air, and that your Lordship's Prerogatives, and your Tenants' Privileges are both dependant on the same Royal Grant, and that your Lordship and we are both subjects to One Just and Gracious Prince, who will not countenance the abuse of his People in the remotest corner of his Dominions. And therefore we beg your Lordship will give your Secretary better Impressions of us than to treat us so much like men that owe their Lives and Liberties only to your Charter." . . . . .

Thirdly, considerable space is then taken up in emphasizing the differences between the recent Jamaica case and the situation in Maryland. The former was introducing statutes she had not had before; must Maryland re-enact *de novo* statutes that she *had* used?<sup>10</sup>

Having thus answered Baltimore's letter point by point, Dulany adds further arguments from precedent, gleaned from the early records of the Province, some of which show the difficulties through which the early colonists had passed. When an English Act was doubtful, they had passed Acts to make it applicable to their needs, and the very modification was an argument that without such modification the English law was in effect. The change of this nature in the Act of

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<sup>10</sup> Compare the facts as given in ch. ii.

Limitations, 21 Jas. I. ch. 16, is noted; then the old conclusion is urged, to grant the rights of the common law and withhold that of the statutes would be piecemeal and precarious—making their statute rights depend on the Lord Proprietor [with his power of veto].

The concluding argument is a new one, taken from a *non obstante* clause in the royal charter. In the paragraph giving the Proprietor the right to alien lands, and the purchasers to hold them, in any estate [tenure] that seemed expedient. “There is an express provision that it shall be lawful so to do, notwithstanding the Statutes of 18 Edward I, commonly called *Quia Emptores Terrarum*, or any other statute, which we hope sufficiently shows the intent of the prince that made the grant and the sense of that time, that the general statutes of England did or at least would (by that grant) extend here, and that therefore such *non obstante* was necessary, which otherwise would have been useless.”

With a request for prompt action in this matter, a complaint against the encroachments of their neighbors upon the Delaware, and a warning against “busy whisperers” who are trying to create “doubts and misunderstandings betwixt Your Lordship and your tenants”—by which the clergy probably are indicated—the address of 1725 comes to an end.<sup>11</sup>

With this address of 1725 we may conclude our detailed consideration of the Assembly documents, for though several of a similar type were drawn up, notably the report of the Committee of Laws in 1728, and the address of 1730, these dealt more with the wording of the oath and less with the general principles. As we have seen in chapter III, this question of phraseology was at length compromised, and we also noticed a similar yielding in the opinion of Yorke in 1729.<sup>12</sup>

In the preceding year, from the press of W. Parks, in Annapolis, there appeared a small folio pamphlet of some thirty-one pages, written by Daniel Dulany, and bearing the

<sup>11</sup> Above, p. 36.

<sup>12</sup> See above, pp. 21, 38-9.

title "The Right of the Inhabitants of Maryland to the Benefit of the English Laws." If to books, as to people, uniqueness and old age lend a certain charm, this little volume—one of the earliest printed books of Maryland—is, on this score, remarkable. An advertisement of it in the Maryland Gazette during 1729 indicates that it must have had some circulation through the Province. However this may be, only one copy, to the present writer's knowledge, now survives.<sup>18</sup> But, besides this rarity, the subject-matter of the volume and the method of treatment make it very desirable to print the whole text as a supplement to this paper. In view of this, only a brief outline of its argument need be given here.

The author begins with a reference to the "pretty warm contest" that has been going on over the English laws, statute and common, and undertakes to prove the right of the inhabitants of Maryland to these English laws; first, on the ground of a common English citizenship, and secondly, on the basis of the rights granted in the charter. After a classification of the English law into the common and the statute laws, and a description of the sources or component parts of each, he asserts that this law of England is the subject's birthright and best inheritance. In support of this is adduced the authority of Lord Coke, the speech of William Creswell before the House of Commons in 1627, and the resolutions of March, 1628.

If, then, all English citizens enjoy the English laws, the Marylanders are English citizens and hence must share their privileges. In rather eloquent words Dulany describes the difficulties which the first settlers met and overcame. Now,

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<sup>18</sup> This one imprint is among the Calvert Papers in the possession of the Maryland Historical Society, which has kindly consented to the reproduction of it in connection with this paper.

Personal search, or information furnished from the librarians, indicates that no copies are to be found in the Bodleian, the British Museum, the Library of Congress, the Harvard University, the Boston Public, the New York Public, the John Carter Brown, the Pennsylvania Historical Society, the American Philosophical Society and the Virginia Historical Society libraries; nor is the book mentioned in Sabin's Dictionary of Works Relating to America, nor in Haven's List of Ante-Revolutionary Publications.

not having been banished from their mother country, not having abjured it, having on the contrary benefited it commercially, and never having swerved from their allegiance, they are still English citizens. This, the crucial thesis of Dulany's argument, is supported by significant citations from Puffendorf's Law of Nature and of Nations, Grotius On the Rights of War and Peace, Coke, and the Acts of the Apostles. In the latter case, the fact of St. Paul's appeal to Cæsar on the basis of his Roman citizenship, leads to the deduction that the Province of Maryland is as much a part of the British dominions as Tarsus was part of the Roman Empire. If anything, the claim of the Marylander is stronger, for his ancestors were English, while those of St. Paul were not Roman.

Then follows a citation from John Locke's Second Essay on Civil Government. The passage selected treats of equality, and is used to argue therefrom the equal right of all the subjects of the English King to the protection and laws which their allegiance justifies.

Next comes an attempt to show that the *statutes* are an essential part of this inheritance. For statutes are the only means of remedy against invasions of the Common Law Rights of citizens. Now, right and remedy are inseparable. As was said in the case of the Aylesbury Men, want of Right and want of Remedy are *termini convertibiles*.

The great bulwarks of English liberty have been erected as statutes. Witness Magna Charta; the various establishments of civil liberty under the Edwards; the Petition of Right, with its reference to ancient statutes; the Acts of the Long Parliament, especially that for the dissolution of the Star Chamber, the Habeas Corpus Act, the Act for settling the succession of the Crown—all were statutes, and surely all English citizens have as much a right to these as to the benefits of the common law. In Maryland, also, are they needed to an equal degree and equally prized.

The argument contra, from the adverse decisions of the courts with reference to Ireland, or the English territories in

France, is met by emphasizing the fact that these countries were already civilized and had laws of their own. The consideration of the Earl of Derby's Case, and Calvin's Case, leads up to a long citation from Grotius on the wisdom of yielding even to a conquered country its own laws. But Maryland, argues Dulany, is not conquered, or, if so, only as against the Indians. The English settlers have lost no rights.

This finishes the first task, the establishment of those rights on the ground of English citizenship. To this is now added, by way of reinforcement, a second line of argument based upon the rights conferred by the royal charter. By the terms of this grant, all rights of Englishmen are distinctly and incontestably bestowed on the freemen of Maryland. In this way the former method of reasoning applies. The statutes of England were necessary to the safe enjoyment of these rights and continue to be their defense.

After condemning the adverse opinion of "an eminent lawyer," Dulany clearly states that the charter does not really give these rights, as new ones, but merely recognizes them as existent, as was the case in Magna Charta in England. The argument that, because Maryland has her own Legislature, she cannot have English laws he considers futile; for the different circumstances of the colony necessitate changes which can only be decided by a local body. It does not follow that the Legislature of Maryland can enact for that Province all the English statutes.

The concluding paragraphs are in some ways the most interesting of all; for here, deserting the argument from the English law, he proposes a Lockeian theory of society, and applies this to the settlers of Maryland. If these agreed to make the law of their mother country their own law, and on long experience are convinced of the equality and justice of them, "Will anyone say that they are obliged to change those laws, or to have them upon any other terms than they have always had them, without their own consent, or the interposition of the supreme authority of their mother country?" The familiar and long-continued reception of the English

statutes, without any other authority, is sufficient to give them permanent force.

Thus closes the pamphlet. At once we see that it is clearly related to the documents found in the Assembly records, and that many of the arguments found in one are common to the other. But we also notice a distinctive feature, in the emphasis laid on the broader principles of Natural Law, taken from Locke, Grotius, and Puffendorf. Of the significance of the appearance of these ideas at so early a time in the eighteenth century, we shall speak more fully in what follows. All things considered, this pamphlet may rank as of high importance, not only for its relation to the course of politics in Maryland, but because it is the only pamphlet, so far as the present writer knows, which is entirely devoted to the discussion of the extension to the colonies of the laws of England.

It is to be regretted that so little documentary evidence is extant to show what was the attitude of the people generally towards this controversy. The records of the Assembly and the Calvert Papers show us that the Lower House, for this purpose, followed Dulany's leadership; and his frequent re-elections indicate that his popularity or his influence was great. But it is not until the end of this struggle that the Maryland Gazette appears, with its interesting sidelights on politics, and then its career is but brief. Private letters of one sort or another have survived, but these usually deal with economic matters, and especially land or tobacco, or with personal affairs, and throw little light on general politics.

One interesting and valuable expression of opinion in the English statutes controversy, which chance has preserved, may, therefore, be given somewhat more consideration than, if materials were plentiful, it would deserve. A bound volume of manuscripts, in the possession of the Episcopal Library of Maryland, consists of the works of the Reverend John Eversfield. This was an Oxford graduate who came to the colony in 1727 and received induction into a parish in Prince George's county, Maryland, where he served as rector for

half a century.<sup>14</sup> The volume referred to includes, first, a Compendium of Logick; then, in succession, "A Short Treatise of Morality," a fragment "of Political Liberty," several legal notes, such as definitions of "usage" and "constitution," a rather long discussion over the extension of the English statutes, a translation of the charter, notes on the *non obstante* clause and on the judges' oaths, and, finally, an incomplete "appendix," dealing with the obligation of law.

No printed work of Eversfield's is known to the present writer,<sup>15</sup> nor can it be estimated how wide a political influence he exerted. The emendations in his manuscripts suggest, however, that his writings were meant for public use in one fashion or another. What is of especial significance to our present inquiry is that he had a most determined antipathy to Dulany and his theory of the extension of the English statutes. This appears from the epithets that he applies to the Attorney-General, though to his credit it should be said that these strenuous expressions are generally canceled and milder ones substituted. We find, for example, "a great lawyer

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<sup>14</sup> From *The Bowies and their Kindred*, by W. W. Bowie, we learn that Mr. Eversfield was born Feb. 4, 1701. He began his education at St. Clive's Grammar School, Southwark, and matriculated at Oxford Apr. 6, 1723. He was ordained deacon in 1725, and priest two years later, shortly after his attainment to the baccalaureate. He was also A. M. of St. Mary's Hall (now reincorporated with Oriel). He came to the province in good circumstances, and acquired large tracts of land. Though he was fond of life and a great fox hunter, his excellent reputation gives the lie to the hasty generalization which would condemn all the colonial clergy to the opprobrium justly laid upon some. He lived till after the beginning of the Revolution, in which time he, like many of his class, was a Tory. An examination of his private papers, for which the writer is indebted to the kind permission of Dr. W. O. Eversfield, shows that he brought with him or purchased from Europe many of the leading works in politics. Among these appear the following titles: Puffendorf's *Law of Nature and of Nations*, Calvin's *Institutes*, Hooker's *Ecclesiastical Polity*, Grotius on the Growth of the Christian Religion, Nelson's *Abridgement of the Common Law*, another edition of Puffendorf, Blackstone's *Commentaries*, Bolingbroke's *Political Tracts*, "The European Settlements in America," "Every Man his Own Lawyer," Vattel's *Law of Nations*.

<sup>15</sup> Unless his "Compendium of Logick" was actually printed, which some circumstances seem to indicate.

among us," "Irish kidnapping dogs . . . who cajole their poor silly countrymen into American servitude under pretense of advancing their ragged fortunes . . .," "pettifogging attorneys," etc. Moreover, in the course of his denunciation of Dulany's programme, he occasionally makes interesting remarks as to the economic condition of the Province. Again, it is significant that his ideas show very distinctly the influence of the writings of John Locke, whom, for one purpose or another, he frequently quotes directly. Eversfield's great fault as a writer is his bad style, which is characterized by great diffuseness, entanglement of ideas, and tiresome repetition.

A few of his arguments may be summarized. In paragraphs injected into his discourse on Morality, he declares, in opposition to Dulany, that "no law binds any people but those for whom 'tis enacted, nor 'em till made known by due promulgation." Without promulgation, no knowledge; without this, no rational consent; without either, no obligation exists, because obedience is impossible. English statutes . . . "can have no relation to the people of Maryland, except they were singular from the rest of the world in having laws before they were a people. To have such laws would be the worst of slavery, yet in this condition has "this lawyer of ours and his followers endeavored to involve the Marylanders, and that, too, under color of English liberty." Neither the civil, nor, in Eversfield's view, the Canon laws of England extend to the colonies, unless the latter are especially mentioned.<sup>16</sup>

Later, he states more specifically that the expression "laws and statutes of England, agreeable to the usage and constitution of Maryland" means such laws as have been used "time out of mind" in the courts of Maryland and approved by the laws and government in the most express manner. Otherwise the judges are given an arbitrary power to decide at random, according to their own discretion. This, he thinks, administers greatly to corruption.<sup>17</sup> And in another place,

<sup>16</sup> Eversfield Volume, pp. 110 ff.

<sup>17</sup> *Ibid.*, p. 269.

where the same topic receives expanded treatment, he says: "Arbitrary justice suits only the condition of slaves," and declares that if the rule of law is uncertain, life, liberty, and property are jeopardized.<sup>18</sup>

Then comes a classification of English laws (statute) into general, which specifically include "the realm of England and all other dominions thereto belonging", and particular statutes—the latter in turn being subdivided into definite particular, which mention the place in which they are to be effective, and indefinite particular statutes, which mention no location, yet are implicitly located [restricted] to "the place and people only for whom they were made, since laws bind none but those particular subjects for whom they were designedly made and for the redress of whose grievances they were intended." From this point he proceeds:

"Many such laws are in England, which being made for the benefit of the English nation only are of obligation to no other subjects but those of that nation; for that nation only having representatives at these parliaments wherein such Laws were enacted none but the people of that nation can be bound by them sith none but they consented to the making of them or indeed know of their being made [:] for the Laws of England enacted for its Benefit only are not promulgated because every Englishman in Construction of Law is supposed to be present by his proxy or Representative at the making of such Laws and his Consent and Knowledge are presumed in every Act of Parliament Passt by them. But with English Subjects Living in another Land who have no Representatives there the Case is quite otherwise for they must be particularly expressed in every English Act of Parliament that Binds them and the Act must be duly promulgated amongst them in the most publick places by their Sheriffs otherwise or by the Governor's order in the Gazettes."<sup>19</sup>

The good parson was then struggling between his belief in the Lockeian government by consent and his regard for the sovereignty of Parliament. For he proceeds to show that the colonists have *not* the full privileges of Englishmen *because* they are subject to the authority of Parliament. In spite of the "soothings" of "illiterate lawyers," the English colo-

<sup>18</sup> *Ibid.* pp. 278 ff.

<sup>19</sup> *Ibid.*, pp. 270 ff. Compare Shower's argument for the plaintiff in *Blankard vs. Galdy*; *Salkeld*, p. 411; or 4 *Mod.*, pp. 222 ff.

nists are *worse off* than those of France; for "both are equally governed by arbitrary legislatures, and the sole difference is in the number of hands in which the arbitrary legislature is lodged." In France, it is the King alone; in England, both King and Parliament. There is no difference in the subjection; "in both the subject having no vote or liberty of demurring under either: obey they must, both willing or not willing, or in default, be punished for their disobedience by an armed force, which is as demonstrative a proof of arbitrary power and vassalage as can be given."<sup>20</sup> Nor is this servitude, he continues, very much abated by their having Assemblies to make laws of their own, for these laws must be consonant to those of the mother country. Moreover, they are grievously oppressed by the Acts of Parliament which bind their trade.<sup>21</sup>

<sup>20</sup> Eversfield Volume, pp. 272-5 ff.

<sup>21</sup> Ibid. pp. 273-4.

In view of the opinion lately pronounced that, in the eighteenth century the Commercial Legislation of England was not regarded as a grievance, it may be worth while to give verbatim a paragraph or two in which Eversfield discusses these matters. Compare Economics and Politics, pp. 10-12.

"Considering that . . . their trade is cramped with high duties and that their staple commodities must be landed in England before they can be exported to foreign markets, which is putting them to the charge of a double voyage, and that no foreign goods is to be imported among them, but from England, which gives the English merchants room to exact unreasonable prices for them notwithstanding the drawbacks—that their clothing and necessaries are to be had from England only, and all the ways and stratagems used to discourage the manufacturing of them among themselves,—the privilege of constitutional legislation [in the Assemblies] will be found but a very small abatement of the many vigorous hardships incident [:] and [it] will be found . . . that French Vassals in America enjoy more valuable privileges, at present, how much surer they may be adjudged hereafter, than English ones in the Plantations [:] for [besides the probability that the French will have such legislatures] . . . they have the greatest encouragements from France for peopling their colonies and carrying on their respective manufactures as any people can desire[.] They have lands almost for nothing, paying a mere trifle by way of acknowledgment for quitrent, pay very inconsiderable duties for their commodities exported, have liberty to export them to any European market they please without being obliged to land them first in France as the English colonies do in England, whereby they save the charge of a second voyage and have the benefit of an

Then follows comment upon the words of the judges' oaths, with criticism of their indefiniteness, which gives to the judges an arbitrary power to select the statutes which are suitable. If the rule of law be uncertain, life, liberty, and property are jeopardized. "Usage," in the judges' oath, must mean the general or particular customs of England received in the Province of Maryland.<sup>22</sup>

The last illustration of Eversfield's ideas that we shall now present consists of a discussion of the common law of England and its application to Maryland.

"The common law of England binds the people of Maryland so far forth as it is rec[eived] by the express or tacit approbation of the Legislature and not otherwise, for the common law, notwithstanding

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early market whereby they can afford to undersell the English merchants in the like commodities with sufficient gain to themselves [:] moreover they import foreign commodities in lieu [?] of them to their respective colonies at a very cheap rate and pay little or no duties either for their imports or exports, which are advantages and privileges the English colonies want for they pay dear for their lands, high duties for their exports, large prices for their imports, are under obligation to land their staple commodities in some port of Great Britain before they can be exported to foreign markets where by the expense of a double voyage and late markets they're undersold by the French and their commodities vended scarce pay for the clothing and feeding of the slaves that make them. And so small a share of the produce comes to the masters of such slaves that were it not that they rais'd their own provisions and made some coarse cloth for their families in some places they could scarce subsist [:] and the merchants at home having the disposal of their commodities frequently defraud them of part of their small gains and send them goods in exchange at a very dear rate to the no small impoverishment of the poor planters and their families, whereby their condition is far worse than that of the French vassals in the Plantations, and tho' they may have the name of liberty yet the French have it in reality [:] notwithstanding the great boast of it among them by such who either understand not the nature of it or if they do for their own private gains study to deceive the populace with the phantom of it under a most specious name and artfull sophistry capable of being invented by the most horrid Machavalian policy [sic]."

For this very pessimistic outburst no specific date is given; but the connection with the Statutes controversy, the suggestion of economic depression, and the thinly veiled reference to Dulany's agitation indicate that it is probably to be placed not much after 1732.

If this hypothesis is correct, the boldness of expression, as well as the facts stated are rather significant.

<sup>22</sup> Eversfield Volume, pp. 276-280.

its being built on reason and deduced from some of its common principles, yet it binds not as a law till it be received] by the consent of the legislature[.] There are many propositions from rational principles which carry fitness and conveniency with them, yet have not the obligation of laws." [ . . . Equal division of real as well as of personal property among a man's heirs is one of these, but . . . ] "the common law of England is otherwise, for it gives the freehold to the first born only. 'Tis also reasonable that all who are bound by the laws of the commonwealth should have public means afforded them of being instructed in the knowledge of them, yet there are no public law schools erected for such purposes, notwithstanding the reasonableness and—[?] of them[;] and many more reasonable propositions can be adduced which are very just and usefull, yet for want of the Legislature's authority to enjoy them they have not the force of a law[;] and were the common law of England to be rec[eived] in Maryland becaus 'tis reasonable, so ought it to be rec[eive]d in Scotland likewise, seeing what is in itself reasonable in one place is so in another. But the case is quite otherwise, for the Scotch have a common law of their own extracted from the Civil Law and common customs, and founded on reason also, and are in no wise subject to the Common Law of England. The reason, then, why the inhabitants of Maryland are bound by the Common Law so far as it suits their constitution is their own consent, for 'tis not obligatory upon them by their charter, nor by any reasonableness of it which is [a] matter of moral prudence and not of civil obligation. . . ." <sup>23</sup> He then proceeds to chide the lawyers for locking up the law from the people.<sup>24</sup>

It is a pity that we cannot know exactly when these reflections of the country parson were set down, whether they were made public — perhaps in his Sunday sermons — and how much influence they exerted. Among his books, we know was later one entitled "Every Man His Own Lawyer"; and of his dislike for the specialists of that profession he leaves us little doubt. We are not surprised, then, to find that his thoughts are not collected so as to utilize their full force, as is the case in Dulany's addresses; or that he is not so ready with precedents and cases as the professional lawyer. More striking than these differences, however, is the similar influence of the natural rights ideas, which is as distinctly visible in Eversfield's writings as in Dulany's. In fact, in the passage last quoted on the Common Law, he states boldly the doctrine of consent which Dulany had brought in more as an hypothesis than as a fundamental argument.

<sup>23</sup> Eversfield Volume, p. 321.

<sup>24</sup> Ibid. p. 322.

## CHAPTER V.

### RESULTS OF THE CONTROVERSY—DIRECT AND INDIRECT.

In considering the results of this controversy, and in attempting to set, in their due relation to the history of the British Empire and to that of the American colonies, the succession of events and the interchange of arguments that we have described in the preceding chapters, we must avoid magnifying to an undue importance that which has come beneath our observation. Maryland was but a small corner of the political world, and to the Empire—perhaps even to neighboring colonies—this controversy and its leaders remained unknown. In this cautious frame of mind, however, we may endeavor to look at the affair in the larger relations of time and place, and with this survey bring our essay to a close.

First, then, we have seen that the technical points at issue were compromised, to the Proprietor's advantage perhaps, and that the leader of the popular body passed over to the official circle, there, however, still exercising his influence for the public good. The compromise, moreover, was only a makeshift, and left an indefiniteness in this part of Maryland law, which differentiated the latter somewhat from the jurisprudence of the other colonies, and from the general theory of the United States Supreme Court.

Next, the reader may once more be reminded of the close connection of this with the other expressions of unrest that mark this period of the colonial history of Maryland, while the whole will impress on him the error of the older view that regarded this as a time of halcyon quiet in colonial administration. In the former essay, also, it was shown that other causes of strife ensued, and that henceforth the Assembly was rarely without some active aggression upon one or another of the prerogatives of the Proprietor.

Again, we find this controversy in Maryland but one outcropping of a general uncertainty which existed in widely distant parts of the Empire, with reference to the legal connection between the mother state and the colony. Nor was even the judicial theory of the Imperial Courts consistent and uniform. In this condition of doubt, then, one colony very naturally looked for argument and precedent to the experience of others, though no concerted action on this point ever took place.

The main propositions urged by Dulany and his party did not survive, for history was against them. Dulany was in the wrong, not merely from the standpoint of the Proprietor, the Crown lawyers and the decisions of the English courts; he was arguing what would really have been to the detriment of the Province. For what would it have meant, if all general English statutes—*i. e.*, those not specifically limited to England—had extended to the Province? Blackstone suggests the answer.<sup>1</sup> If this doctrine had been maintained, many of those cases wherein the colony was free from the complications and burdens of the older civilization would have been reversed; while, if it were answered that the colony could pass laws of its own to amend such statutes, the reply would be that such laws might be vetoed by the Proprietor quite as effectively as laws to extend English statutes. In fact, the power of dissent, if its exercise were continued, would work either way; and it was just this control by the Proprietor over colonial legislation which lay at the root of the difficulty. Dulany is playing the rights of Englishmen against the prerogative of the Proprietor.

It will undoubtedly have been noticed that in the arguments of the country party no word was said of the danger of parliamentary control; it is Eversfield who complains of the Navigation Acts and Acts of Trade.<sup>2</sup> Yet, we know that the burdens of this legislation were not unrealized; and we can

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<sup>1</sup> Above, p. 22.

<sup>2</sup> Above, pp. 58-59.

hardly suppose that either Dulany or his supporters really wished in any way to increase the authority of Parliament. What they did want was this: to have the statutes of England, especially those of a beneficial or remedial nature, as a sort of reservoir, from which they could draw easily and quickly, without the possibility of prevention on the part of the proprietary.

Recognizing, then, that the direct object which Dulany aimed at proved a failure, one naturally queries if this was all. Had the controversy no further result than to give Dulany a place in the official system of the colony? or did it exert any influence on later years?

In answer, let us consider first a purely formal survival, in the case of the very first manifesto of the country party. Part of the Resolutions of 1722,<sup>3</sup> with which Dulany had opened fire, denied with rather skillful rhetoric the applicability to Maryland of the conquered province theory. Moreover, they contained in themselves a provision for their perpetuation. Now, to every historical investigator there is an obvious difference between a requirement that the reading of certain resolutions shall be a standing part of the legislative procedure, and the actual fulfilment of that requirement; and proof will be demanded that the use of these resolutions was continued. In this case, the proof is forthcoming.

A perusal of the manuscript journals of the Lower House shows that these resolutions are very often, though not always, included. The transcription upon the records might have been, however, a very formal matter; it is much more interesting to feel that they appear from time to time in the *printed* votes and proceedings of various sessions, for in this form they had a far wider circulation among the people, or, at least, among the politicians.<sup>4</sup> We may go farther, however, and connect them directly with the revolutionary times, for one of these printed "Votes," of the year 1745, in which

<sup>3</sup> See Appendix, where the Resolutions are given in full.

<sup>4</sup> Several of these are in the possession of the Maryland Historical Society. Among them is that for 1745, referred to in the text.

the resolutions appear in full, bears upon it the name *Carroll*, and the comment: "These resolutions were entered annually in the Proceedings of the House of Burgesses, as far as I can understand. I have several other sessions in which they are entered."

If, on the one hand, this suggests that the origin of the resolutions had been lost sight of, on the other it shows that they were regarded as worth consulting at a later time. This is borne out by comparing the more important resolutions of the revolutionary period, such as those on the Stamp Act, where there is some similarity of language, although the greater number of resolves deal with new matters. Such cases of partial reference are, of course, harder to make certain, for by that time the parlance of the radical party was much the same in every colony. The more noteworthy, therefore, is the appearance of these resolutions of Dulany's, in their integrity, as late as 1771.

When, in 1770-1772, the great dispute over the fee bill and Governor Eden's proclamation reached its height, on one occasion adopted certain resolutions. Dr. Steiner, in his monograph on Eden, speaks of these resolutions "which told in ringing words of their fixed determination to resist all unjust claims of England," as if they were prepared for the occasion; and this impression is deepened by a note which quotes at length a resolution treating of the relation of the colonists to the Indians—a resolution strangely irrelevant to anything then under discussion.<sup>5</sup> In reality, these resolutions of 1771 consist, first, of the resolutions of 1722, plus slight modifications made subsequently, and, secondly, of a protest against the assessment of the export tax on tobacco, which, since 1750, had been permanently attached to the standing resolutions of 1722. Now, the whole is again brought forward as a basis for all additional resolutions of rights. It is not unworthy of remark that now the younger Dulany, who, a few years

<sup>5</sup> Steiner, B. C.: The Life and Administration of Sir Robert Eden; Johns Hopkins University Studies in Historical and Political Science, Series XVI., pp. 47-8 [381-2].

before, was in his turn defending colonial interests, appears in the fee bill controversy as the champion of prerogative and of the proclamation.

We have, then, one case in which part of the controversial material of 1722 survived to the revolutionary period in its original form. This, however, is unique, and from it we must pass to the general character of the documents which we reviewed in the last chapter, their principles and their phraseology.

In so doing, one is struck at once by the fact that the reasoning of all the important documents—the reports and addresses, Dulany's pamphlet, and, to a less degree, Mr. Eversfield's notes—is distinctly that of English law. This is seen, again, in the sources from which the writers of these papers drew. Dulany, we know, like a number of others, had supplemented his education in Maryland law by a brief period of study in Gray's Inn. That he is thoroughly at home in the English cases, he shows by quoting Coke's Institutes and Reports, the reports of Vaughan, Holt, Salkeld, Anderson, and Roll, Wingate's Maxims, and, for constitutional history, Hale's History of the Law and Rushworth's Collections. At least twice we are referred to Care's "English Liberties," one of the many summaries of the practical parts of the English law that preceded Blackstone's Commentaries. Considering, then, his handling of authorities, and his method of using them, as attested not only in these papers, but in the Maryland reports of Harris and McHenry, we may hold, without yielding to the *Lues Boswelliana*, that Dulany was among the ablest lawyers of his generation in all the Atlantic colonies.<sup>6</sup>

Now, within the Dulany family this legal prestige was handed down; for Daniel Dulany, the younger, carefully educated in England and trained in the law, surpassed the fame of his

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<sup>6</sup> Andrew Hamilton, of Pennsylvania, of course, enjoyed a wider intercolonial reputation, and some others, such as Attwood or Mompesson, were more prominent in Imperial politics.

father.<sup>7</sup> But apart from this personal influence, and its fruit in the next generation, the distinctly legal character of the controversy over the English statutes undoubtedly helped to stamp a similar feature upon the subsequent constitutional development of the colony. This emphasis on the legal method of procedure was older than Dulany's work; it was in some sense a characteristic of Maryland's development from the beginning, but it was reinforced by the succession of legal documents which Dulany wrote for the Assembly. Henceforth, to the Revolution, the lawyers led the Assembly to attack one part of the government after another, and the bar of Maryland increased the roll of distinguished names till the Carrolls, Paca and Chase won, on the patriotic side, fame which his Tory opinions lost to the younger Dulany.

English law, however, was not the only source of the general principles which these papers expound. Of really more novel significance is the emphasis on the Law of Nature. The progress of the colonial mind, before the Revolution, to clarity and agreement on the political relation of the mother country and the colonies is to be traced in a mass of literature which lies beyond the limits of our consideration here. After the Stamp Act the American colonists were not anxious to claim English statutes; on the contrary, they finally denied the right of Parliament to legislate at all for the colonies. Yet they clung closely, for awhile, to their English rights and liberties; and indulged in a good deal of curious logic to maintain their English privileges without their English responsibilities. If we consider, for example, the Declaration and Resolves adopted by the First Continental Congress, we find the second paragraph emphasizing these English liberties, the third declaring that they had not forfeited them by emigration, and the fifth and sixth claiming the right to the

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<sup>7</sup> The Author of the Considerations on the Propriety of Taxing America, which Chatham used in England, was a legal oracle in the Southern Colonies until, when the struggle between the Proprietor and the Popular Party became intense, his defense of prerogative cost him popular favor and kept him on the Tory side in the Revolution.

Common Law, the English statutes which existed at the time of their emigration and which they found applicable to their local circumstances. The immunities and privileges of the charters are emphasized also.<sup>8</sup> Or if we consider the Fairfax Resolutions in Virginia, drawn in 1774 by George Mason, we find that they begin with the old statement that the colonists of Virginia were not a conquered people;<sup>9</sup> and similar citations, showing the basis of the English law might be made from writers from Massachusetts to Georgia.

These were not sufficient to justify the Revolution; and in their need the colonial writers gleaned the rich fields of John Locke's Second Essay on Government, and of the works of continental publicists, adapting from these sources the doctrine of the Law of Nature and basing their claims on the rights which that gave mankind. The only use of this system which we wish now to discuss is the employment of it to explain the legal system of America, in the following manner.

In a very interesting debate, which John Adams has reported for us, the committee appointed by the Continental Congress to state the rights of the colonists discussed the basis on which they should fix their rights.<sup>10</sup> The arguments are too long to quote; suffice it to remark that the radical wing declared that English law did not bind or had not bound the colonists *as* the law of England, but *by their own choosing*, and *only* by their consent. As was indicated above, this idea, so effectively destructive of the sovereignty of Great Britain was not pressed in the Declaration and Resolves; but the same principle was urged by Jefferson in his Summary View, and by John Adams in his *Novanglus*, to mention only two of the framers of political opinion in America. The

<sup>8</sup> Adams, C. F.: *The works of John Adams*, Vol. 2, Appendix C, where the original draft is given for comparison. The Declaration and Resolves may be found conveniently in Macdonald's *Select Charters, etc.*, pp. 357-361.

<sup>9</sup> Rowland: *The Life of George Mason*, Vol. 1, Appendix VII. It is not impossible that these were influenced by the Maryland Resolutions of 1722, which had been readopted three years before (See Above p. 64). Mason may have known of these.

<sup>10</sup> Adams, C. F.: *The Works of John Adams*, Vol. II, pp. 370-373.

extension of English law, they claimed, was purely a voluntary act of the colonists.

Now, after this somewhat lengthy excursus, let us return to our documentary material in the Maryland controversy. Let us notice Dulany's citation of Locke to show that the Marylanders had an *equal right* to the English laws, with the inhabitants of England: let us follow his quotations of Grotius and Puffendorf, to support a similar idea; and let us observe in the closing paragraph a somewhat timid suggestion that the people of Maryland had a right from a state of nature to choose what law they would. What have we here but the very doctrine of 1774, expressed in a rude and undeveloped form? Not only in Dulany's pamphlet, but also in Eversfield's book, do we have the consent of the people urged as the only authority that gives binding force to law. Moreover, returning to Dulany's pamphlet, we meet the very phrases that did such service in later times: "a state of equality," "life, liberty, and property," "inherent rights."<sup>11</sup>

Let us be far from suggesting that Dulany's pamphlet introduced those ideas, or that from it did the later writers draw any ideas. What we wish to demonstrate is that the natural rights philosophy as applied to government, and its terminology or vocabulary, which are too often first mentioned in connection with James Otis or Samuel Adams, were common property a generation before Otis' first pamphlet saw the light.<sup>12</sup> During all this time these ideas were sinking in upon the colonists' minds, and if, when the Revolution came, their law failed them, they were ready with a philosophical justification of their position. To the verity of this statement, for Maryland, Dulany's pamphlet and Eversfield's notes bear ample witness.

One more point, before we close. As we all know, it was when the colonists, after a certain period of *laissez-faire* had

<sup>11</sup> *The Right of the Inhabitants*, etc., *passim*.

<sup>12</sup> Similar ideas, based on Puffendorf, appear in John Wise's *A Vindication of the Government of New England Churches*, published about 1717.

brought to their consciousness rather suddenly the realization of their imperial or, if one may stretch the term, their international relations, that the doctrine of Natural Rights became as it were their universal political creed. Now, few of the practical questions that came up could lead them more easily to this system of thought than this interrogation as to the legal relation of dependencies to the colonizing power, which we have had under investigation. For the English law itself, as seen in the decisions of the courts from Calvin's Case down, bore, here more than in most of its departments, the stamp of the influence of the Law of Nations; and how easy would be the passage from this to the Law of Nature, must appear to anyone who reads even the chapter titles of the Second Essay on Government. The same connection is witnessed to by the frequent reference to Grotius and Puffendorf, whose influence on revolutionary thought the greater importance of Locke sometimes causes us to forget.

Thus we bring to a conclusion our studies in this period of Maryland history. With the middle of the eighteenth century came changes in the *dramatis personæ* and in the questions, economic and political, which the provincials had to meet. But the new growth had its roots in the old. The improvement of the tobacco culture, the introduction of German immigrants; the possibilities open to a skillful leader in the provincial legislature; the warm discussion of the imperial constitution as applied to the Province—all of these found their beginning in that time which we have chosen for investigation, and which we have described in the foregoing pages.



## APPENDIX I.



## THE RESOLUTIONS OF 1722.

Proceedings and debates of the Upper and Lower Houses of Assembly, in the years 1722, 1723, and 1724, relating to the Government and Judicature of the Province. . . Philadelphia. Printed and sold by Andrew Bradford at the Sign of the Bible in the Second Street. MDCCXXV. [Pages 2-ff.]

OCTOBER 25, 1722.

Proposed by a Member and Resolved by the House, That the Members that are appointed as Members of the Comm. of Aggrievances, have likewise the Character of a Committee for *Courts of Justice*, and that that Character, and the Duty of such Committee, be annexed to the said Committee of Aggrievances as a Standing part of their Duty.

Resolved, There be a Committee for the Courts of Justice.

And that it be an Instruction to the said Comm., as a *Comm. of Courts of Justice*, That they observe the Nature of all the Commissions to the several Courts of Judicature within this Province, and that they especially observe any Alterations that may at any Time happen by accidental Omission or otherwise, therein, and particularly relating to such *Words* therein as require the several Judges and Justices to Hear, Try and Determine, according to the Laws, Statutes and Ordinances and reasonable Customs of *England*, and of this *Province*, or to such other Words as have relation thereto, and that they shall immediately make Report to the House of any Alterations that shall at any Time happen in such Commission, and likewise to have regard, as near as may be, to observe wherein they differ from the forms of the several sorts of Commissions to the Judges and Justices in *England*.

Likewise, *Resolved*, That it be an instruction to the said Committee to inspect the forms of the oaths of office that have been and now are usually taken by the several Magistrates; and that in case the following clause be not inserted in the said oath, it be reported to the House, such clause being agreeable to the oath taken by the

Judges in England and resolved to be necessary here, viz:

"To do equal Law and Right to all the King's Subjects, Rich and Poor, and not to delay any Person of Common Right for the Letters of the King, the Lord Proprietary or of any other or for any other cause. But if such Letters come to them, they shall proceed to do the Law the same Letters notwithstanding."

**The Duty of the Clerk of the Assembly.**

And that Copy of these Resolves be made and given to the Said Committee when they first go out, every Sessions; and that making and giving such Copies be the undoubted Duty of the Clerk of this House, and within the Purview of his Oath.

**Maryland Not Conquered but Acquired.**

*Resolved* also, That this Province is not under the Circumstances of a Conquered Country; that if it were the present Christian Inhabitants thereof would be in the Circumstance, not of the Conquered, but of the Conquerors, It being a Colony of the English Nation, encouraged by the Crown to transplant themselves hither for the Sake of improving and enlarging it's Dominions, which, by the Blessing of God upon their Endeavours, at their own Expence and Labour has been in great Measure obtained.

**And How.**

And 'tis unanimously *Resolved* That whoever shall advance, That His Majesties Subjects by such their Endeavours and Success, have forfeited Any Part of their *English Liberties*—are ill Wishers to the Country and mistake it's happy Constitution.

*Resolved also*, That if there be any Pretense of Conquest, it can be only Supposed against the Native Indian Infidels, which Supposition cannot be admitted, because the Christian Inhabitants purchased great Part of the Land they at first took up from the Indians, as well as from the Lord Proprietary, and have ever since Continued in an amicable Course of Trade with them except some partial Outrages and Skirmishes which never amounted to a General War, much less to a General Conquest, the Indians yet enjoying their Rights and Privileges of Treaties and Trade with

the *English*, of whom we yet frequently purchase their Rights of such Lands as we take up—as well as of the Lord Proprietary.

Resolved further, that this Province hath always, hitherto, had the Common Law, and such general Statutes of England as are not restrained by Words of local Limitation in them and such Acts of Assembly as were made in the Province to suit its particular Constitution as the will and standard of its Government and Judicature, such Statutes and Acts of Assembly being Subject to the like Rules of Common Law or Equitable Construction, as are used by the Judges in Construing Statutes in England, which happy Rules have by His Majesty and His Royal Ancestors, and also by his Lordship and his Noble Ancestors, or some of them, been hitherto approved, by having the Commissions of Judicature to include Directions of that Nature to the several Judicial Magistrates, unless those words have at any time been casually or carelessly omitted by the Officers, in this Province, that drew such Commissions. That, therefore whoever shall advise his Lordship, or his Successors, to Govern by any other Rules of Government, are evil Councillours, ill wishers to his Lordship, and to our present happy Constitution, and intend thereby to infringe our English Liberties, and to frustrate in great Measure, the Intent of the Crown—by the Original Grant of this Province to the Lord Proprietary.

Resolved further that the foregoing Resolutions of the House are not occasioned by any Apprehension that the Lord Proprietary has ever infringed, or ever had any Intention to infringe the Liberties or Privileges of the People, or to Govern otherwise than according to the Usage and Custom of the Country since the first Settlement thereof, but merely to assert their *Rights* and *Liberties*, and to transmit their Sense thereof, and of the Nature of their Constitution to Posterity, without the least design of reflecting upon any person whatsoever.

Ordered That the Copy of the Several Resolves of the 25 Instant be made out—which was accord-

ingly done, and sent to the Upper House by Col.  
L. and Mr. H. with the following Message, viz.:

[By the Lower House of Assembly.]

October the 31st, 1722.

May it please your Honours:

This House having made the several Resolves herewith sent, have thought fit  
to Communicate them to your Honours.

Signed per order—

M.J. Cl. Lo. Ho.

## APPENDIX II.



THE  
RIGHT  
OF THE  
Inhabitants of *MARYLAND*  
TO THE  
Benefit of the *ENGLISH LAWS*.

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*Oh Liberty! Oh Servitude! How amiable, how detestable are the different Sounds! Liberty is Salvation in Politics, as Slavery is Reprobation; nor is there any other Distinction, but that of Saint and Devil, between the Champions of the one, and of the other.*

CATO.

ANNAPO利S: Printed by W. Parks, MDCCXXVIII.<sup>1</sup>

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(<sup>1</sup>) Reprinted by the kind permission of the Council of the Maryland Historical Society.



## p.iii TO ALL TRUE PATRIOTS, AND SINCERE LOVERS OF LIBERTY.

Gentlemen,

The following Sheets are not made publick, because the Author of them is fond of appearing in Print; but because the Representatives, of the People of Maryland, whose Request, bears the weight of a Command, with him, desired they should be publish'd. The Design is *honest*, and what every Body ought to wish, had been undertaken by a Person more *equal* to it; that the Right contended for, might have appeared in its *proper* Lustre; and all Objections to it,

p.iv have been obviated, as I am firmly persuaded they may be. For my *own Part*, I shall think my Time very well spent, if the Objections, with which I expect this *weak* Performance will be encount'red; or a *generous* Concern, to see so *good* a Subject, so weakly managed, excites some able Lover of Liberty, to establish the Truths, which I have faintly endeavour'd to establish. I heartily wish this may happen, as well as every Thing else, conducive to the Prosperity of the Province of Maryland; and am, very sincerely,

Gentlemen,

Your most Obedient, and  
Faithful, Humble Servant,

D. DULANY.

p.1 THE RIGHT OF THE INHABITANTS OF MARYLAND,  
TO THE BENEFIT OF THE ENGLISH LAWS.

As there has been a pretty warm Contest, concerning *The Right of the Inhabitants of Maryland, to the Benefit of the English Laws;* as well Statute as Common: And as the Matter is in Dispute, and it is of the utmost Consequence to be at a Certainty about it; It behoves every Man, that has any Regard to, or Interest in the Country, to use his utmost Endeavour to put it in a true Light: For as *Laws* are absolutely necessary, for the good Government, and Welfare, of Society, so, it is necessary, that People should have some Notion of those Laws, which are to be the Rule of their Conduct; and for the Transgression of which, They will be liable to be punished, notwithstanding their Ignorance. If this be necessary? as without Doubt it is; Then it is certainly of the greatest Importance to know, whether a People are to be governed by *Laws*, which their *Mother-Country* has experimentally found, to be beneficial to Society, and adapted to the Genius, and Constitution of their Ancestors; or to compose a new Set of *Laws*, which will be attended with very great Difficulties; and an Expence, vastly disproportional to the Country, in its present Circumstances. Or

p. 2 whether, They are to be governed by the Discretion, (as some People softly term the *Caprice*, and *Arbitrary Pleasure*,) of any Set of Men.

This, or the like Enquiry, cannot be of any great Moment, but to those that are Free: For, such as have the Misfortune to be in a State of Bondage, are in the Condition of *The Ass in the Fable*; sure to be as heavily laden as they can possibly bear, without rendering them useless to their Masters.

But the *People of Maryland* are *Freemen*, and will certainly continue to be such, as long as they enjoy the Benefit of Laws, calculated for the Security of Liberty, and Property, and the Rights of Mankind: But should They be so infatuated as to give up, or so miserable as to forfeit, (which God forbid!) the Benefit of such Laws; They may then, bid adieu to all the Security They have, of enjoying with any Degree of Certainty, anything, however dear, and valuable.

The Considerations put Me upon enquiring, in the best Manner, my very weak Capacity, and other Disadvantages, would admit of, into the Right, which the People of Maryland have, to the Enjoyment of English Liberties; and the Benefit of the English Laws: Which I take to be, and hope to prove are, convertible Terms. In which Enquiry, I have found very good Reasons, (at least, They seem so to Me,) to convince Me, that the said People have such Right.

To the End, therefore, that I may be undeceived, if I am mistaken; or That I may confirm others, in the Truth, and Reasonableness of what I contend for; as well as the mighty Advantage it is of, to the Inhabitants of this Province, I will endeavour to prove the Right.

p. 3 I. As the People are English, or British Subjects, and have always adhered to, and continued in their Allegiance to the Crown.

II. As the Rights of English, or British Subjects, are granted unto Them, in the Charter of the Province, to the Lord Proprietary.

But before I proceed to treat of these several Rights, it will not be amiss, to observe, that the Law of England consists of the Common and Statute Laws. That the Common Law, takes in the Law of Nature, the Law of Reason, and the revealed Law of God; which are equally binding, at All Times, in All Places, and to All Persons. And such Usages, and Customs, as have been experimentally found, to suit the Order, and Engagements of Society; and to contain Nothing inconsistent with Honesty, Decency, and Good Man-

ners; and which by Consent, and long Use, have obtained the Force of Laws.

The Statute Law, consists of such Acts of Parliament, as have been made from Time, to Time, by the whole Legislature; some of which, are declaratory, or alter the Common Law; I mean, such Part of it as consists of Usages, and Customs, that received their Force and Sanction from the Consent of the People; when those Usages, and Customs, have been mistaken, misapplied, or found to be unsuitable to the Order, and Engagements of Society, in order to make the whole Body of the Law, best answer the true End of all Laws, the Good and Safety of the People.

Some, have restored the People to the Rights, that were theirs, by the Common Law, (which contained nothing inconsistent with General Liberty and Property,) and which ill Men, had at Times, invaded, and infringed; and have made New Barriers, (if I may so speak,) to prevent future Infringements

P. 4 of the like Nature; and paved out a certain, determinate Path, for every Subject, suffering Violence, and Oppression, to be remedied; And taken Care to make it the Interest as well as it ever was, and ever must be, the indispensable Duty of the Magistrate, to allow the Subject, the Benefit of the Law; by rendering the Magistrate himself punishable, if he should neglect, so essential a Part of his Duty.

Some Statutes, are Introductory of new Laws, which may be divided, into such as are by the Words, or Subject Matter of them, of general Use and Extent; such as are more confined; and such, as are made for particular Ends, and Purposes. I shall have Occasion to treat of the first of These, only.

This Law, of England, is the Subject's Birth-Right, and best Inheritance; and to it, may be justly applied, what the great Oracle of the Law, the Lord Coke, saith of the Common Law. "Of Common Right, that is, by the Common Law; so called, because this Common Law, is the best and most Common Birth-Right, that the Subject hath, for the Safeguard and Defence, not only of his Goods, Lands, and Revenues; but of his Wife, and Children, his Body, Fame, and Life, also.

(I) 'Tis this Law, that will effectually secure every Honest Man, who has the Benefit of it, in his Life, the Enjoyment of his Liberty, and the Fruits of his Industry. 'Tis by Virtue of this Law, that a British Subject, may with Courage, and Freedom, tell the most daring, and powerful Oppressor, that He must not injure him, with Impunity. This Law, uprightly and honestly applied, and administered,

will secure Men from all Degrees of Oppression, Violence, and Injustice; it tells the Magistrate what he has to do, and leaves him little Room, to gratify his own Passion, and Resentment, at the Expence of his Fellow-Subject. It suits the Degrees of Pun-

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(I) I. Inst. 142.

**p.5** ishment, to the Nature and Degrees of Offences, with a due Regard to the Circumstances of Aggravation and Extenuation; as well as to the Frailties and Infirmities of Human Nature. 'Twas of this Law, that it was truly said, by an honest, bold Patriot, an hundred Years since, in Parliament; "Our Laws, which are the Rules of "Justice, are the *Ne plus ultra*, to King, and Subject; and as They "are the Hercules Pillars, so are they the Pillar to every Hercules, "to every Prince, which He must not pass. (2)

It was upon the Foundation of this Law, that it was resolved in the House of Commons, in March, 1628, Nemine contradicente,

I. "That no Freeman ought to be detained, or kept in Prison, "or otherwise restrained, by command of the King, or of the Privy "Council, or any Other, unless some Cause of the Commitment, "Detainer, or Restraint, being express'd, for which, by Law, He "ought to be committed, detained, or restrained.

II. "That the Writ of Habeas Corpus, may not be denied; but "ought to be granted to every Man, that is committed, or detained "in Prison, or otherwise restrained, though it be by command of "the King, the Privy Council, or any other; He praying the same.

III. "That if a Freeman be committed, or detained in Prison, "or otherwise restrained, by the Command of the King, the Privy "Council, or any other; no Cause of such Commitment, Detainer, "or Restraint being expressed, for which by Law, he ought to be "committed, detained, or restrained; and the same be returned, upon a Habeas Corpus granted for the said Party; then He ought to be delivered or bailed.

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(2) Mr. Creswell's Speech, March, 1627; Rushworth's Collections, Vol. 1, p. 506.

**p.6** "That it is the antient, and indubitable Right of every Freeman, "that He hath full and absolute Property, in his Goods and Estate; "that no Tax, Tallage, Loan, Benevolence, or other like Charge,

"ought to be commanded, or levied, by the King or any of his Ministers, without common Consent, by Act of Parliament. (3)

And this Law is not to be altered, but by the whole Legislature, and we may as reasonably apprehend, that a whole People will be seiz'd with a Delirium, as fear such a Change.

Having given this Short Account of the Law itself, which I hope will not be thought altogether useless. I shall now proceed, in the Method I proposed, of proving the Right, of the Inhabitants of Maryland, to the Benefit of English Laws.

I. As they are English, or British Subjects; and have always adhered to, and continued in their Allegiance to the Crown.

The First Settlers of Maryland, were a Colony of English Subjects, who left their Native Country, with the Assent and Approbation of their Prince; to enlarge his Empire in a remote Part of the World, destitute of almost all the Necessaries of Life, and inhabited by a People, savage, cruel and inhospitable: To which Place, they (the first Settlers,) transported themselves, at a great expence; ran all the Hazards, and underwent all the Fatigues incident to so dangerous and daring an Undertaking; in which Many perished, and Those that survived, suffered All the Extremities of Hunger, Cold and Diseases. They were not banished from their Native Country, nor did They adjure it.

It pleased God, in process of Time, that some of those People, their Posterity, and others that followed, met with such Success,

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(3) Rush I. B. 513.

as to raise a Subsistence for Themselves; and to become very beneficial to their Mother-Country, by greatly increasing its Trade and Wealth; where-in, They have been as advantageous to England, as any of Her Sons, that never went from their own Homes, or underwent any Hardships; allowing for the Disparity of Circumstances. And it cannot be pretended, that ever They adhered to the Enemies of their King or Mother-Country; departed from their Allegiance, or swerved from the Duty, of loyal, and faithful Subjects: These are Truths, too evident, and too well known to be denied, by any One, that has the least Share of, or Regard to, Truth, or Common Honesty.

This being the Case of the People of Maryland, it will not be amiss, to observe the Opinions of the two great Civilians, and Politicians, Puffendorf, and Grotius, in Relation to Colonies: The first, says, "That Colonies may be, and often are, settled in different

" Methods: For, either the Colony continues a Part of the Commonwealth It was sent from; or else, is only to pay dutiful Respect " to the Mother-Common-wealth, and to be in Readiness to defend " and vindicate its Honour.

(1) Maryland is undoubtedly a Part of the British Dominions, and its Inhabitants are Subjects of Great Britain, and so are They called, in several Acts of Parliament.\*

And Grotius faith, " That Such, enjoy the same Rights of Liberty " with the Mother City. (2) And again, in another Place, " For they " are not sent out, to be Slaves, but to enjoy equal Priviledges, and " Freedom." (3) Thus far these great Men.

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(1) Law of Nature and Nations, B. 8. Chap. II. 8. 6. \* 12 Car. 2. Cap. 34.  
15 Car. 2. Cap. 7. Sect. 5. 25 Car. 2. 11 and 12 W. 3 Cap. 12

(2) Grotius of the Rights of War and Peace B. I. Cap. 3. S. 21. (3) B. 2 Cap. 9. 8. 10.

<sup>p.8</sup> It is an established Doctrine, that Allegiance, and Protection, are reciprocal; and that a Continuance in the One, entitles the Subject to the Benefits of the Other: " As the Ligatures, or Strings, (says " Lord Coke) do knit together the Joints, of all the Parts of the " Body, so doth Legiance join together, the Sovereign, and all his " Subjects. (4) For as the Subject oweth to the King, his true and " faithful Legiance, and Obedience; so the Sovereign is to govern " and protect the Subject. (5) Between the Sovereign, and the Sub- " ject, there is a double and reciprocal Tie; for as the Subject is " bound to obey the King, so is the King bound to protect the Sub- " ject. (6) And Subjection draws to it Protection, and Protection Subjection. (7)

Every Subject has a Right to the Enjoyment of his Liberty and Property, according to the established Laws of his Country; when that Right is invaded, Recourse must be had to the Law for a Remedy: And a Man, who hath the Benefit of the Law, is sure to have Reparation for any Injury that has been done Him; and is secure against future Wrongs: But, if he has not the Benefit of the Law, he must not only submit to past Injuries, if done by a Person Superior to him, in Power; but be exposed to future Insults, whenever Power, and Inclination, concur to oppress Him: From whence.

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(4) 7 Co. Rep. 4. b. (5) ibid. 5. a Regere et protegere subditos suos. (6) Duplex et reciprocum Ligamen, quia sicut Subditus Regi tenetur ad Obedientiam ita Rex Subdito tenetur ad Protectionem. 4 Co. Rep. 5. a. (7) Protectio trahit Subjectionem, Subjectio Protectionem ibid.

it necessarily follows, that the greatest Advantage, which the Subject can possibly derive, from the Royal Protection, is the Benefit of the Laws; that so long as the Subject hath That, he is secure of every Thing which belongs to Him; that when He loses It, He loses every Thing; or at best, hath but a very uncertain, and precarious Tenure, in any thing: This Subjection, and this Protection, are not bounded by any Space, less extensive than the British Dominions.

**p. 9** This, Reason speaks loudly, and Numbers of Authorities are not wanting to confirm; tho' I intend, to confine myself to One, which is the Case of St. Paul;\* which is so well known that a particular Recital of the Text is needless; and therefore I shall only observe, that the Apostle claimed the Benefit of the Roman Law, not because, he was born in Rome, or Italy; or indeed, in Europe; for he was born in Asia: Nor did he claim the Priviledge of a Roman, in Rome, Italy, or Europe; but in Judea: There was no Dispute of his Right, because he was born in a remote Province of the Empire; There was no Pretence, that the Laws which were securitative of the Roman's Rights, were confined within narrower Limits than those of the Roman Dominions. Instead of any Pretence of this Kind, the Roman Captain, was afraid of being called to an Account, for having violated the Roman Law, by inflicting a Punishment, that it did not allow of, on a Person, entitled to the Benefit of that Law; And that, as hath been already observed, in a very remote Corner of the Empire.

The Province of Maryland, is as much a Part of the British Dominions, as Tarsus the City, or Cilicia the Country, of St. Paul's Birth, was Part of the Roman Empire: And consequently, a Man, born in Maryland, hath as good a Right, to demand the Benefit of the Laws of his Mother Country, as the Apostle had, to demand the Privileges of a Roman. One would be apt to think, that if there was any Difference, in the two Cases, the Marylander, would have much the better of it; for his Ancestors were English, and St. Paul's Ancestors were not Romans. In a word, the People of Maryland, are not out of the Reach of their Prince's Protection, nor so foolish, or wicked, as to disown their Allegiance, to the best, and most gracious of Kings. What the Learned Mr. Locke, says of natural Equality, being I conceive, applicable to the present Purpose, I am certain it will be

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\* Acts Chap. 22. V. 25, &c.

p.10 very acceptable; "A State of Equality, (says that great Man) "wherein all Power and jurisdiction, is reciprocal; no one having "more than another: There being nothing more evident, than that "Creatures, of the same Species, and Rank, promiscuously born, to "all the same Advantages of Nature, and the Use of the same Fac- "ulties, should also be Equal, One, amongst another, without Sub- "ordination, or Subjection; unless, the Lord, and Master of them "All, should, by any manifest Declaration of his Will, set One "above Another, and confer on Him, by an evident and clear Ap- "pointment, an undoubted Right, to Dominion, and Sovereignty.†

Can any Thing be more evident, than that All the Subjects, of the same Prince, living within his Dominions, adhering to their Allegiance, and in a Word, behaving themselves, as dutiful and loyal Subjects ought, and promiscuously born under the same Obligation of Allegiance, Obedience, and Loyalty to their Prince, and to the same Right of Protection, should also be entitled to the same Rights, and Liberties, with the rest of the Subjects, of the same Prince, of their Degree, and Condition. Or can anything be more clear, than that Subjects, having an equal Right to Priviledges, must also have an equal Right to the Laws, made to create or preserve such Privileges? And without which, they cannot be preserved; unless the supreme Power, by any manifest Declaration, distinguish some Subject from Others, by depriving some, of their Privileges; and continuing them to Others.

If the People of Maryland are thus unhappily distinguished, they must submit. But if on the contrary, They have a Right, in common with the rest of their Fellow Subjects, to English Liberties, and Privileges. 'Tis absurd to say, They have not a Right to the Means of preserving them.

† Locke of Civil Government. Chap. 2. Sect. 4.

p.11 By what hath been, and will be said; I hope, that the Right of the People of Maryland, to the Benefit of the Laws of England, is, and will be evidently proved; and that it will be likewise proved, that That Benefit, is of infinite Advantage, to any People, who receive the same, in the full Extent of it. If so, it will necessarily follow, that to deprive the People, of the Advantages, derivative from the Laws of their Mother Country, would be greater Injustice, and Oppression, than they could suffer in any particular, or indeed in many Instances; by so much, as the necessary, and only

Means, to secure Men in all their Rights, is of greater Consequence, than any particular Part of their Property.

I have heard of some Men, who have advanced, that the People of Maryland, have a Right to English Liberties, but not to English Laws; and wonder, Why there should be so much to do about those Laws! When we may do as well without, as with them. Such Notions are the Effect of Ignorance, in some and of something worse in Others: And, (as I hope to prove,) are big with Absurdity: All the Rights, and Liberties, which the British Subject, so justly, values Himself upon; are secured to Him, by the British Laws: And when, and as often as those Rights and Liberties, are invaded, Recourse must be had to the Law, for Reparation: Right, and Remedy, are inseparable; and when the latter ceases, the former is extinguished the same Instant. "A Man (saith a great Lawyer,) hath no Right to any Thing, for which the Law gives no Remedy. (I)

It was held by as great a Judge, as ever sate in Westminster Hall, clearly; "That a Devisee, might maintain an Action, at Common Law, against a Ter-tenant, for a Legacy, deviled out of Land; for, where a Statute, as the Statute of Wills,

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(I) Vaughan's Reports 253.

p.12 "gives a Right, The Party, by Consequence, shall have An Action at Common Law, to recover it. (2) The same Judge, held that it was a vain Thing, to imagine, there should be a Right, without a Remedy. Want of Right, and Want of Remedy, are Termini convertibles. (3) And of the same Opinion was a former Judge, (4) And there never was One of a contrary Opinion.

It is very evident to every Man's Reason, without any judicial Decision, or other Authority, That to have a Right to a Thing, without any Means or Remedy to maintain that Right, is of no Service. And it is well known, that in all civil Governments, the only certain, and just Remedy, is the Benefit of the Law. Of this, some that advance the foregoing Notions, are aware; but they very well know, that it ought to be carefully concealed, from Those, that they would impose their destructive Doctrines upon, as Orthodox.

Others are so good natured, as to allow the People of Maryland, the Benefit of the Common Law; but contend stiffly, that they have no Right to any of the Statutes; and that having the Liberty of supplying that Defect, by making Act of Assembly, to suit all their

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(2) Holt and F. Salkeld's, Rep. 415. Vol. I.

(3) 6 Mo. Rep. 53. the great Case of the Aylesbury Men. (4) 6 Co. Rep. 58.

Purposes; or even, of Re-enacting such of the Statutes themselves, as may be convenient for them, they have no Occasion for the Statutes at All; Whence then, say they, these Apprehensions of wanting Laws? 'Tis only the Statute Law you have no Right to, nor Occasion for. As to the Power of Legislation, I shall say something hereafter.

What I contend for, is, that we derive our Right to British Liberties, and Privileges, as we are British Subjects: That as such, We have a Right to all the Laws, whether Statute, or

p.13 Common, which secure to the Subject, the Right of a Subject, as inseparably incident to those Rights; that the Right to the Liberties, and Privileges; and the Benefit of the Laws, have the same Foundation: And therefore, If we may be deprived of any Part of that Right, without our Consent, or our being convict of any Crime, whereby to forfeit it? We may, by the same Reason, and Authority, be deprived of some other Part; and this, will naturally render the Whole, uncertain; and our Lives, Liberties, and Properties, Precarious.

I have no Notion of a Certainty, in any Thing, that I hold by so slender a Tenure, as the Will of another; but think it vain, and arrogant, to call it Mine.

Those, that would vouchsafe Us the Benefit of the Common Law, but would entirely deprive Us of the Benefit of any of the Statutes, would leave Us in a poor Condition, with Regard to our Liberties: For all the Rights, which the English Subject was entitled to, by the Common Law, were at Times, invaded by Men of Power, and Authority; and the very Invasions themselves called by the Iniquity of Men, and Time, the Law of the Land: And that very Law, which was calculated, and instituted for the Defence, and Safeguard, of Property; prevented to the Destruction of Property. By the Law of Nature, All Men were equal; and by that Law, the Law of Reason, and the Revealed Law of God, Men are enjoyned, to treat One Another, with Humanity, Justice, and Integrity.

Yet, such has been, and is, the Depravity of Human Nature; and so little, has the Love of Equity, and Justice, prevailed among Men; that the excellent Rules, which the Laws already mention'd dictate, have not been sufficient to keep them, within just Bounds, or to restrain them, from treating one Another, with the greatest Cruelties imaginable: Whence, it became absolutely necessary, to make some further Provision by positive Laws;

**p.14** such as our Statutes, to oblige Men, to comply with, what the Love of Justice would not, but the Fear of Punishment, might induce them to comply with, and to punish the Disobedient, and Refractory. All which have been found by Experience, to be little enough, to keep Ill Men, in Order; or secure Good Men, from Violence, and Oppression. This hath been the Case, in England itself; A Nation, that has abounded, with Men of great Abilities, great Interest, and opulent Fortunes; that were Patrons of Liberty, Lovers of Justice, and such as preferr'd the Good of their Country to All their own particular Concerns: And that were therefore, Checks to Oppressors, and Violators of Laws, and the Rights of Mankind: Yet the Virtue, Resolution, and Endeavours of these Worthies, were not sufficient, to secure themselves, or their Fellow Subjects, in the Enjoyment of their Rights and Liberties; or the Law, from being polluted by Ill Men, in Authority; or turn'd to the Destruction of the Best, for opposing the Ruin of their Country. That this, hath often been the Case in England, everybody knows, who is at all acquainted with its History; and I believe it has been so, in all other Nations. Such calamitous Circumstances, were not to be born, by a Free-People, who were possessed of the Means, to provide for their own Safety.

Magna Charta was made, which as all eminent Lawyers agree, is, and indeed, by the Words of it, appears to be, A Declaration of the Common-Law: † The 29th Chapter is not long, and ought to be read by every Body, and (in my humble Opinion,) taught to Children, with their first Rudiments; the Words of it are, “ No Freeman shall “ be taken, or imprisoned, or disseised of his Freehold, or Liberty, “ or free Customs; or outlawed, or exiled, or any way destroyed: “ Nor (says the King) will we pass sentence upon him, but by lawful “ judgment of his peers or by the law of the land:

† I Inst. 81.

**p.15** “ To None will we sell; To None will we deny; To None will we “ defer Justice, or Right.” If new Rights, or Liberties were granted, they would be particularly granted; and there would be no Occasion to refer to the Laws of the Land.

By another Statute, Subsequent to Magna Charta, it is provided “ That no Man, of what Estate, or Condition that he be, shall be put “ out of Land, or Tenement; nor taken, nor imprisoned, nor disin-“ herited, nor put to Death, without being brought into answer, by “ due Process of Law.” (a) This Statute, directs no new Process of Law; and enacts over again, what seems to have been provided for,

(a) 28 Edw. 3, cap. 3.

by Magna Charta, which was in full Force, when this Statute was made.

By another Statute, made but Fifteen Years after the last, and in the same Reign: It was assented to, and accorded for the good Government of the Commons; that no Man, be put to answer without Presentment before Justices, or Matter of Record, or by due Process, or Writ Original; according to the old Law of the Land. (b) To recite but a very small part, of all the Statutes, that have been made, to confirm, and establish the Subject's Rights, and Liberties that were his, by the Common Law, would be too tedious: I shall therefore, confine myself to a few Instances: In the Preamble, and several Parts of the Body, of the Petition of Right; a great Number of Statutes are mentioned, that confirm'd the Subject's Right, in his Liberty and Property; which were then in Force, and yet had all been violated: (c) Wherefore, it was thought necessary, to declare against the Violation; and establish the antient Rights, in a Parliamentary way, which was accordingly done.

In the Sixteenth Year, of the Reign of King Charles I. very great Complaints were made of the Star-Chamber, and Council-Table, That the Judges of the former, had not confined themselves

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(b) 43 Edw. 3. cap 3. (c) 3 Car. I. C. I.

p. 16 to the Points, limited in the Statute of H. 7. C. I. which empowered the Great Officers of the Crown, and other Great Men, to proceed and punish some particular Offences; "but had undertaken to punish, where no Law did warrant, and to make Decrees for Things, "having no such Authority; and to inflict heavier Punishment than "by any Law was warranted: That the Proceedings, Censures, and "Decrees, of that Court, had been found by Experience, to be an "intolerable Burthen to the Subject, and the Means to introduce an "arbitrary Power and Government: That the Council-Table, had of "late Times, assumed to itself, a Power to intermeddle in civil "Causes, and Matters only of private Interest, between Party and "Party, and had adventured to determine of the Estates, and Liberties of the Subject, contrary to the Laws of the Land, and the "Rights and Priviledges of the Subject." The Court of Star-Chamber was entirely dissolved, as were several other Courts; and the following, ample, Parliamentary Declaration made: "Be it "enacted and declared by Authority of this present Parliament, "that neither his Majesty, nor the Privy Council, have, or ought to "have, any jurisdiction, Power, or Authority, by English Bill, Petition, Articles, Libel, or any other arbitrary way whatsoever, to "examine, or draw into Question, determine, or dispose of, the

"Lands, Tenements, Hereditaments, Goods, or Chattels, of any of "the Subjects of this Kingdom; but that the same, ought to be "tryed, and determined, in the ordinary Courts of Justice, and by "the ordinary Course of the Law." \* Great Officers transgressing this Law, are liable to severe Penalties.

The Preamble to the Habeas Corpus Act, shews, what Shifts, and Evasions, were used, to elude the Force of the Laws, that were instituted, to secure the Subject's Liberty; the Words

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(\*) 16 Car. c. 10.

P. 17 are: "Whereas, great Delays have been used, by Sheriffs, Goalers, "and other Officers; to whose Custody, any of the King's Subjects, "have been committed, for criminal, or supposed criminal Matters; "in making Returns, of Writs of Habeas Corpus, to them directed; "by standing out an Alias, Pluries Habeas Corpus; and sometimes "more, and by other Shifts, to avoid their yielding Obedience to "such Writs; contrary to their Duty, and the known Laws of the "Land; whereby many of the King's Subjects, have been, and here- "after may be, long detained in Prison, in such Cases, where by the "Law they are bailable; to their great Charges and Vexation. (I) Therefore, Provision is made, to oblige all Officers to perform their Duty, and to punish such as shall not do so. There is no Part of the Royal Prerogative, abridged, or retrenched by these Statutes; no new Liberties, or Priviledges are granted to the Subject. Here are ample, and large Declarations in Parliament, of the Subject's Rights; loud Complaints of the Violation of those Rights; The Rights, themselves, confirmed; and the knavish Chicanes, and crafty Inventions, that were introduced to deprive the Subject of his Rights, are abolished; and more easy, plain, and direct Ways, for the Subject, to come at the Benefit of Laws, established in their Room.

By the first Act for settling the Succession of the Crown, a Parliamentary Declaration, of the Rights, and Liberties of the Subject, was thought necessary; not because the Subject had forfeited his Rights, and Liberties; or demanded new: But because, those that antiently belonged to him, had been invaded, and violated.\*

From what hath been said, it is evident; that the English Subject, had very ample Rights, and Privileges, by the Common Law; and it is manifest by the several Statutes already mentioned;

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(I) 31 Car. 2. C. 2. (\*) 1 W. & M. C. 2.

p.18 and a Multitude of others, as well as the English History; that the Common Law, though frequently confirmed in Parliament, was not sufficient, to secure Him from Oppression, and Violence: And there is no other Remedy, when Laws are violated, but to punish the Violators, and establish, and confirm the Laws; which have been frequently done, and sometimes with great Difficulty, and the Expence of a great deal of Blood, and Treasure. Whoever has read the Parliamentary Proceedings, in the Last, as well as Queen Anne's Reign; will find, that when the Safety of the Government, rendered a temporary Suspension of the Execution of the Habeas Corpus Act necessary; it was always opposed, when proposed to be of any considerable Duration: And the longest Time of Continuance of any of those Acts, that I ever saw, was not above 18 Months; so careful has the British Parliament been, to preserve to a People, justly fond of Liberty, and wisely jealous, of everything, that might be destructive of, or hurtful to It; the Benefit of a Law, that is a great Support and Preservative of Liberty. This shews, that the British Subjects, esteem the several Statutes, that have been made to confirm their Common Law Rights, to be of mighty Consequence, and Advantage to them: And any one, may well imagine, that if any Attempt should be made, to abrogate those great Defences and Bulwarks of the People's Liberty; everybody would be alarmed, and dread the Introduction of the same, or greater Mischiefs, than those, that render'd the making so many confirmatory Acts necessary: And it would be stupid, and irrational, to think the contrary. If then, the Case was, as hath been already mention'd, in England? That, notwithstanding its Common Law, entitles the People, to ample Liberties and Priviledges; that there were great Numbers of brave, honest Patriots, who understood the Laws

p.19 of their Country, perfectly well, and who never fail'd to use their utmost efforts, in Opposition to every Violation of that Law; that notwithstanding all they could do, themselves, and others, were insecure in their Lives, Liberties, and Properties; and Things were brought to such Extremities, that it became necessary, to confirm, and strengthen, the antient Rights by the Legislative Authority: And that, although That was frequently done, yet Oppressions were frequently renewed, and wicked Men in Power, always found Pretences, to oppress those, that would not abett, or would oppose their Crimes; and they have never wanted Instruments, to execute all their villainous and destructive Schemes.

Let us consider our own Circumstances, and enquire, Whether

the Number, Ability, Interest, or Fortune, of our Patriots bear any Proportion, to those that England has been blest with, in all Ages. Whether we are greater Lovers of Justice, and Equity, than other People, or have less Occasion for Laws, to restrain those that are unruly amongst us, and to secure and protect those that are peaceable, and innocent, than our Neighbors have. And whether Men of the greatest Authority, and Interest among us, may not have as strong Inclinations for Power, and Dominion, and of Lording it over their Inferiors, as we are told Great Men in other Parts of the World have. By a serious Consideration of these Things, we may be able, to form some Judgment, of the Condition we should be in, if we were to forfeit the Benefit of all the Laws, that have been made; I mean, the Statutes to declare the Subject's Right at the Common Law; and to establish, strengthen, and confirm, that Right. "If Men (says an ingenious Author) will be great Knaves, in spight of Opposition; how much greater would they be, if there were none.\*

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(\*) Cato's Letters.

p.20 Some People, will object several Book Cases; wherein the Judges have resolved, that the English Laws did not extend to Ireland; 'till it was expressly enacted that they should: And that the English Acquisitions in France, were never governed but by their own Laws: From whence, the Necessity of enacting the English Statutes, in Maryland, before it's Inhabitants can have the Benefit of them, is often inferred. But this Objection, (I conceive) will be of no great Weight; when it is considered, that those Countries, were inhabited, by civilized, sociable People, conversant with Arts, Learning and Commerce; that had Laws, suited, and adapted to the Order, and Engagements of Society; by which, themselves, and others that went to live among them, might be peaceably, and happily governed: The Cause was wanting here, and so must the Effect be; for Maryland, before it was settled by the English, was, as to Law, and Government in the same Condition, with an uninhabited Wilderness: "And in Case of an uninhabited Country, newly found out, by the English Subjects; All Laws in Force in England, are in Force there. †

The native Indians, were rude, savage, and ignorant; destitute of Letters, Arts, or Commerce; and almost, of the common Notions, of Right, and Wrong—A People, thus qualified, must make excel-

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(†) P. Holt C. 1. 2 Salk 411.

lent Preceptors, for Englishman! and shew, (without Doubt,) worthy Examples, for their Imitation!

In the Dispute between the Earl of Darby, and the Sons of a former Earl, about the Isle of Man, when it was urged, that the English Laws, extended to that Island; it was alledged, and proved, that they were governed by other Laws, which Laws, were shewn in Writing: For which Reason, (I conceive, though the Book is silent in that Particular,) it was adjudged, that the English Laws did not reach the Isle of Man.\*

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(\*) 2 Anderson's Reports. 116.

**p.31** In a Word, it seems clear, that the Reason of the adjudged Cases, turns upon this, that even in the Case of a Conquered Country, the People ought to enjoy their own Laws, until they are actually abrogated, and others instituted in their room, by the Conqueror. This appears plainly in Calvin's Case, † where a Distinction is made between the Conquest of a Christian Kingdom, and the Kingdom of an Infidel. "Upon this Ground, there is a Diversity "between a Conquest of a Kingdom of a Christian King, and the "Conquest of a Kingdom of an Infidel; for, if a King come to a "Christian Kingdom by Conquest, seeing that he hath Vitae et necis "potestatem, he may at his Pleasure, alter and change the Laws of "that Kingdom; but until he doth make an Alteration of those "Laws, the antient Laws of that Kingdom remain." And it appears plainly in History, that some of the wisest, as well as most successful Nations in the World, have been very careful to avoid making such Changes, lest they might beget an irreconcileable Hatred between the Victors and Vanquished; whereas, leaving the latter the Use and Benefit of their own Laws, would make them submit, with the less Reluctance, to the Government of their Conquerors; and there is neither Policy, nor Humanity, in making People desperate. "Thus "did the Goths, when they overcame the Romans; \* So had the "Romans done, when they conquered the Germans and Gauls: "What would our Empire now have been (says Seneca) if a whole- "some Providence had not intermix'd the Conquered with the "Conquerors. Our Founder Romulus (says Claudius, in Tacitus) "did so prevail by his Wisdom, that he made of those that were "his Enemies, the same Day, his (Subjects and) Citizens; and he "tells us, that nothing contributed so much to the Ruin of the "Lacedemonians and Athenians, as their driving away the Conquered as Strangers. Histories give us Examples of the Sabines, Albans, Latins, and other Italian Nations, till at last Caesar led the Gauls in Triumph, and then entertain'd

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(†) Co. R. 17 C. \* Grotius of the Rights of Peace and War. B. 3. chap. 15.

p.22 "them at his Court. Cerealis, in Tacitus, thus addresses the Gauls; "You yourselves generally command our Legions, you govern "these, and the other Provinces; you are denied or debarr'd of "nothing: Wherefore love and value that Peace and Life, which the "Conquerors, and Conquered enjoy equally. Polibius admires the "Moderation of Antigonus, that when he had Sparta in his Power, "he left to the Citizens their antient Government and Liberty; "which Act acquired him Praise throughout Greece.

"Thus the Capadocians were permitted by the Romans, to use "what Form of Government they pleased, and many Nations after "the War, were left free. Carthage was left free, to be govern'd by "her own Laws, as the Rhodians pleaded to the Romans after the "2d. Punick War; And Pompey (says Appian) of the Conquer'd "Nations, left some free to their own Laws. Thus the Govern- ment continued among the Jews in the Sanhedrin, even after the Confiscation of Archelaus.

"When all Empire is taken away from the Conquer'd, there may "be left them their ordinary Laws about their private and publick "Affairs, and their own Customs and Magistrates. Thus Pliny's "Epistles tell us, that in Bithynia, a Proconsular Province, the City "of Apamea was indulged to govern their State as they pleased "themselves. And in another Place the Bithynians had their own "Magistrates, their own Senate. So in Poictus the City of the "Amisni, by the Favour of Lucullus, was allowed its own Laws, "The Goths left their own Laws to the Conquered Romans. We "read in Salust, the Romans chose rather to gain Friends than "Slaves, and thought it safer to govern by Love than Fear. Julius "Caesar told Arioivistus \* that Fabius Maximus fairly Conquered "the People of Auvergne and Rouerge, whom he might have re- "duced into a Province, and made Tributaries to the Empire. But "he forgave them

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(\*) Caesar's Commentaries.

p.23 "and did not doubt, but it might be easily prov'd, upon further "Search into Antiquity, that the Romans had a very good Title to "that Country; But since it was the Pleasure of the Senate they "should remain a Free People, they were permitted the Use of their "own Laws, Government, and Customs." Critognatus, the Gaul, thought he could not use a more favourable or prevailing Argu- ment with his Countrymen, to encourage and unite them against the Romans, than to tell them that the Romans design'd to possess

their Country, and make them perpetual Slaves; and that they never made War upon any other Account. "If you are ignorant (says he) of their Transactions in remoter Countries, cast your Eyes upon the Neighbouring Gaul, which is reduced to a Province, deprived of its Laws and Customs; and labours under an Eternal Yoke of Arbitrary Power.

I have heard it asserted, that Maryland is a Conquered Country; which, by the By, is false; and that the Conquered, must submit, to whatever Terms, the Victor thinks fit to impose on him: Were the Case really so, The Indians, must be the Vanquish'd, and the English the Victors; and consequently, the Indians, would be liable to the Miseries, in which a Conquered People are involved: Otherwise, the Conquerors themselves, must be Losers by their Courage, and Success; which would be but a poor Reward of their Valour; However gross, and absurd, these Notions appear to be, at the very first View, to every Man of Common Sense; yet, have they been insisted on, with great Confidence, by Men, that have had more Knowledge than Honesty. But suppose even this, to be the Case, that the English, by being brave and successful, had forfeited their Native Rights, and become Slaves by their Acquisition: Yet, even that, as the Case stands, would not reduce them to the Condition, wherein some kind People wish to see them; viz. Being excluded from any Right to, or Benefit from the English Laws. For the Charter

p.24 of Maryland, does not only contain a Grant of the Country, with several Prerogatives to the Lord Proprietary: But also contains a Grant, to the People, of all the Rights, Privileges, Immunities, Liberties, and Franchises, of English Subjects: Which brings me to the second Thing I proposed: viz. The Right which the People of Maryland, have to the Benefit of the English Laws, by the Charter of the Province, to the Lord Proprietary: The Words whereof, pertinent to the present Purpose, are:—"And We also of our mere "special Grace, injoyn, and constitute, ordain, and command, that "the said Province shall be of our Allegiance; and that all, and "singular, the Subjects, and liege People, of Us, our Heirs, and "Successors, transported, or to be transported, into the said Province; and that the Children of them, and such as shall descend "from them, there, already born, and hereafter to be born; shall be "Denizens of Us, our Heirs, and Successors, of our Kingdoms of "England, and Ireland; and be, in All things, Held, Treated and "Esteemed, as the Liege, Faithful People, of Us, our Heirs, and

" Successors, born within our Kingdom of England: And likewise, " any Lands, Tenements, Revenues, Services, and other Heredita- " ments whatsoever, within our Kingdoms of England, and other " our Dominions, may inherit, or otherwise purchase, receive, take, " have, hold, buy, possess; and them may occupy and enjoy, give, " sell, alien, and bequeath: As likewise, All Liberties, Franchises, " and Privileges, of this our Kingdom of England, freely, quietly, " and peaceably, Have, and Possess, Occupy, and Enjoy, as our Liege " People, Born, or to be Born, within our said Kingdom of Eng- " land; without Let, Molestation, Vexation, Trouble, or Grievance, " of Us, our Heirs, and Successors; any Statute, Act, Ordinance, or " Provision, to the contrary thereof notwithstanding.

It would be difficult, to invent stronger, or more comprehensive Terms than these, whereby All the Liberties, Franchises, and Privileges, of English Subjects, are granted to the People of Maryland: And this Charter, which I have seen, in the Old Books,

p.25 of the Council's Proceedings, has been confirmed, by Act of Parliament.

The English Subject, as hath been already mentioned, and proved, (as I conceive,) had an undoubted Right to his Liberties, Franchises, and Privileges, by the Common Law: Yet those Liberties, Franchises, and Privileges, were all invaded, and violated, and Multitudes of good Men were first deprived of the Benefit of the Law, and then exposed to Rapine, and Oppression: These Oppressions, always produced Murmurings, and Discontents, and sometimes Slaughter and Bloodshed; and last of all, Acts of Parliament, to heal the Breaches, that had been made in the Laws; (I) and to establish and confirm the antient Rights of the Subject. The Acts thus obtained, have always been deemed, as essential a Part of the Security, of the Subject to his Rights and Privileges, as the Common Law itself: And, as he was insecure, before they (the Statutes) were made; so would he be rendered, if they were abrogated, or He deprived of the Benefit of Them: For the Benefit of the Laws, is so necessary to support the Liberties, which they were instituted to confirm and establish; That the Abrogation of such Laws, would in Effect, be an Abolition of the Liberties themselves.

Here then, by these Words of the Charter, the Liberties, Franchises, and Privileges of an English Subject, are granted fully, and amply, to the People of Maryland; the Benefit of the Laws, securitive of those Liberties, etc., as inseparably incident to the Liber-

(I) History of Magna Charta, and the Transactions of several Reigns before it, in the Book called English Liberties. p. 8. 9. & 10.

ties themselves, are also granted, by Implication: This is Doctrine, that I am confident, will not be gainsayed by any Lawyer: For these, are established and uncontroverted Maxims: That, when the Law gives a Thing, it gives

p.26 a Remedy to come at it. (2) Things incident, are adherent to the Superior, or Principals. (3)

They, that are to have the Conusance of any Thing, are also, to have the Conusance of all Incidents, and Dependants thereon; for an Incident, is a Thing necessarily depending upon another.(4) When the Law gives a Thing, All Things necessary for obtaining it, are included.(5) When a Thing is commanded to be done, every Thing necessary to accomplish it, is also commanded. (b) So when a Power is given, to do any Act, a Power is therein included, of doing every Thing, without which, the Act could not be compleatly done.

I hope the Passage out of the Charter, the Authorities produced, and the Nature of the Thing; are sufficient, to convince every unprejudiced Person, that if the first Settlers of Maryland, had really lost their native Laws, and Rights, and been in the Condition of a Conquer'd Country; that they, by this Charter,

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(2) Lou le Ley done chose, la wo done Remedy avener a seo. 2 Roll's Reports 17. (3) Wingate's Maxims, 127. "If a man be seised of Lands in Fee-simple, and having divers Evidences and Charters, (some of them containing a Warranty, "and some not,) conveys the Land over to another, without Warranty; upon "which he may vouch; the Purchaser shall have all the Charters, and Evi- "dences; as well those containing the Warranty, as the others: For as the "Feoffer had conveyed over his Land absolutely, and is not bound to Warrant "the Land, so that he might be vouched to Warranty, and to render in Value; "And the Feoffee is bound to defend the Land, at his Peril: For this Case, it "is reasonable, that the Feoffee should have all the Charters, and Evidences, "as incident to the Land; although they be not granted to him, by express "Words." I. Co. R. I. Lord Buckhurst's Case. A Grant of Reversion, includes a Grant of the Rent, by Implication, as incident to the Reversion. I Inst. 151. a.

(4) Wingate's Maxims 131. I Inst. 56 a Wood's Inst. 263. "Quando Lex aliquid

"alicui concedit, concedere videtur etud, sine quo, res ipsa esse non potest."

(5) Upon a Writ of Estrempment, directed to the Sheriff, whereby, He is com-manded to prevent any Waste being done; It was resolved, that he might resist all those, that would do Waste, and that, if he could not otherwise prevent them, he might imprison them, and make a Warrant to others, so to do: And that if it were necessary, he might take the Power of the County to his aid—5 Co. R. 115. (b) Quia quando Aliquid mandatur. Mandatur et omne per quod pervenitur ad aliud. 2 Inst. 423.

p.27 are put into the same State, and Condition, that their Fellow Sub-jects residing in England are in, as to their Rights and Liberties: And, as it is already (I humbly conceive) proved, that the Benefit of the Statute, as well as the Common-Law, is the only Bulwark, and sure Defence of the Subject's Life, Liberty, and Property; I would

ask this one short Question,—How the People of Maryland, can have the Benefit of what is granted them by the Charter, if they are deprived of the Means, viz. The Benefit of All the Laws that are necessary to secure them, in the Enjoyment of what is granted.

It seems very strange to me, that any One in his Senses, should imagine it out of the Prince's Power to treat his Subjects in this remote Part of his Dominions, with Mercy, Clemency, and Tenderness; or to confer so great a Favour on them, as the Laws of their Mother Country: But that he may treat them with Rigour and Severity: This, as strange as it seems, hath been advanced by an eminent Lawyer, as I am inform'd: And others, of less Knowledge, relying (I suppose) on his authority, and Judgement, have given into the same wild Sentiments: I shall use no other Arguments to confute such extravagant Notions, so void of Loyalty, and Common Sense, but a Passage out of the celebrated Mr. Waller's speech, in Parliament; wherein he elegantly exposes some Men's Notions of the Law, not unlike those whom I have been speaking of, in relation to the King's Power: "As if the Law, says he, was in Force for the Destruction of the Subjects, and not for their Preservation; that it should have Power to kill, but not to protect them: A Thing, no less horrid, than if the Sun should burn Us, without lighting Us; or the Earth serve only to bury, and not to feed and nourish Us! It may, probably, be supposed, that I give up the first Right, I mentioned; by laying so great a Stress on that which is deriv'd from the Charter:—But I am far from it,—For I should think the Right good, had the Charter never been made; as were the

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p.28 Rights of English Men, to all the Liberties, confirmed by Magna Charta, and other subsequent Statutes, before they were made: And as the Confirmation of the Subject's antient or Common-Law Rights, by several Acts of Parliament, is very beneficial to the Subject; so the Grant, or Confirmation of the same Liberties by the King, to the People of Maryland, is also very advantageous. It is no new Thing, even in particular Cases, to have a Grant from the King, to a private Person, of a Thing in which he really had a Right, and the King had none.\* It hath been objected, that truly,

\* The Possessions of the Prior of Shiells, were seized into the King's Hands, because (as it was alledg'd) he was an Alien; Whereupon he sued a Writ of Right to the King; setting forth, that at another Time, he was Prior of Andover; and his Possessions were seized into the King's Hands; although he was the King's Subject, born in Gascoin, within the King's Allegiance: Upon this, the King, of his special Grace, commanded his Escheater to make Restitution; and yet the Judges declared, The King had no Right to seize. So was it done, in the Case of Reniger and Fogasa, in the Commentaries, p. 20. Only, no mention is made of the King's special Grace.

We have a Power of Legislation; that if any of the English Laws, are suitable to the Circumstances of the Province, we may enact them a-new: And from thence, 'tis inferred, that there is no Reason, to contend so much for the English Laws; and, indeed, that we have no Right to them, since we are so amply provided for otherwise. To this I answer,

That the Power of Legislation, granted to the Lord Proprietary, and the People of Maryland, was design'd as a Benefit, and not as a Prejudice: For it could hardly be suppos'd that a New Colony, vastly distant from their Mother-Country, exposed to the Insults of a cruel and savage Enemy; and inhabiting a Wilderness, must not be at a Loss, in some particular Cases, to apply the Rules of the Common Law, or general Statutes; (were they ever so conversant with them,) which happens to be the Case, in Great Britain, itself, and occasions the making of new Statutes, almost every Session of Parliament; and not to

p.29 have it in their Power to provide suitably to any Emergency, by Laws of their own, would expose them to many Inconveniences; to prevent which, no better Expedient could be thought of, than to grant Them a Power of Legislature, under proper Restrictions. Thus it is in all Corporations; the Members of them, have a Power, with the like Condition, expressed, or implied, that is annex to the Power of Legislation, Granted to his Lordship, the Lord Proprietary, and the Freemen of Maryland, to make By-Laws, for the particular Utility of their own Country. And I believe, no Lawyer, or Man of Sense, ever imagined, that such a Grant, divested those that accepted of it, of the Rights they were born to in Common, with their Fellow-Subjects. Besides, if we consider the prudential Part, it is impossible that We can be ignorant, That the enacting so many New Laws, would take up a vast deal of Time, and occasion a greater Expense, then our Circumstances will admit of: And when all is done, they will not be any better than they are now, nor near so good, unless great Care be taken in transcribing them: And I have the Opinion of a very eminent Lawyer, "That it is never prudent, to change a Law, which cannot be better'd in the Subject "Matter of the Law."\* There is another Circumstance, that (as I humbly conceive) is of great Weight, and deserves the most serious Consideration; which is this: Should We attempt to enact such of the English Statutes, as may be supposed to suit the Condition of

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\* Vaugh. C. I.

the Country, upon a Supposition, that We have no Right to them, without so doing; and that We should miscarry in that Attempt, which is not impossible, it would be such an Argument against the Right we contend for, as we could not easily get over; besides the Danger of its being made a Handle, to overturn a great deal, that hath been heretofore done, by Virtue of the Statutes.

p.30 Thus, I have endeavoured to prove The Right of the People of Maryland, to the Benefit of all the English Laws, of every kind, that have been instituted for the Preservation, and Security of the Subject's Liberty, from Reason, and Authority; and to represent to my Fellow-Subjects, the great Advantage they derive from the Laws of their Mother Country; and how highly they ought to esteem them.

And I beg leave to add, That Men, from a State of Nature and Equality, formed themselves into Society, for mutual Defence, and Preservation; and agreed to submit to Laws, that should be the Rule of their Conduct, under certain Regulations. Let us suppose the first Settlers of Maryland, to be a Society of People, united and combined together, for mutual Defence and Preservation; and sensible, not only of the Use, but also of the Necessity of Laws, and conscious of their own Incapacity, to make such as might suit their Occasions, and procure their Welfare and Safety: I say, suppose them under these Circumstances, without any Regard to their Rights, as English, or British Subjects, or by Charter: And that they actually agreed, to make the Laws of their Mother-Country, (of which it is to be presumed, they had a general, or at least, some Notion,) to be the Rule of their Conduct, with such particular Provision, as they should, at Times, find necessary to make, in particular Cases: And that upon long Tryal, and Experience, of those Laws; they became convinced, of the Equality, and Justice of them, and consequently, fond of them: Will any one say, that they are obliged, to change those Laws? Or, to have them upon other Terms, than they have always had them, without their own Consent, or the Interposition, of the supreme Authority, of their Mother Country. It is manifest, by the judicial Proceedings, (which my Lord Hale says, make one formal constituent Part of the Law; \*) and the Manner of Transferring Property, in

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(\*) Hale's History of the Law.

p.3<sup>1</sup> Maryland, that the People, since the first Settling of the Province, have in all Cases, (some few excepted, which particular Acts of Assembly provided for,) looked upon the Laws of England, as well Statute as Common, to be their Laws, and the Rules of their Conduct. The Tenure, by which they hold all their Land, is Free and Common Soccage; which is a Common-Law Tenure. A great Part, of the most valuable Land in the Province, is intailed, by Virtue of the Statute de Donis.(1) A greater Part, devised by Virtue of the Statute of Wills.(2) And not a little, conveyed by Deeds of Lease, and Release, by Virtue of the Statute, for transferring Uses into Possession.(3) The Statute of Frauds and Perjuries, has always been allowed to affect Devises, not made conformably to it.(4) And as in England, Usages, and Customs, in Process of Time, have obtained the Force of Laws, which they always, afterwards, continued to have, till they were altered, or abrogated by the Legislative Authority; so those Laws, that have been received in Maryland, though the People had no other Right to them, but that Reception, and the long-continued Use of them; ought to have the Force of Laws, until other Provision is made, by the Legislature of the Province.

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(1) 13 E. I. c. 1. (2) 32 H. 8. c. 1. 34, 35 H. 8. c. 5. (3) H. 8. 1. 10.  
(4) 29 Car. c. 3.

## INDEX

Adams, Rev. Alex., 343.  
Addison, Col. Thos., 319.  
Alexander, J. J., 505.  
Allouez, Claude Jean, 13-14.  
Altham, John, 370, 384, 417 (note),  
    428-429, 450.  
Andrews, Robert, 182 (note).  
"Ark," The, 372, 376-381, 383, 387.  
Ashe, W. S., 203.  
Ashley, Prof., quoted, 278.  
Ashmore, Wm., 410.  
"Atlantic, Tennessee and Ohio  
    Railroad," 152.

Bagwell, Thos., 397.  
Baldwin, Col. Benj. F., 122-123.  
Ball, J., 74 (note).  
Baltimore, Lord, 503. (See "Cal-  
vert.")  
Barringer, R., quoted, 137 (note).  
Beaufort, 149, 159.  
Beckler, Edward, 425-426, 439.  
Beecher, Henry Ward, 70 (note).  
Belson, John, 397, 410.  
Benton, Elbert Jay, on "Wa-  
    bash Trade Routes," 5-112.  
"Blackstone's Commentaries,"  
    quoted, 486.  
Bladen, Thos., 275.  
Blank, Herr von, 249.  
"Blankard vs. Galdy, 484-485,  
    500-510, 512.  
Bordley, Steven, 334.  
Bordley, Thos., 283, 288-289, 321.  
Boylan, Wm., 122.  
Bradford, Andrew, 499-500.  
Bragg, Thos., 139.  
Brainthwait, Wm., 455, 456.  
Brown, Peter, 122.  
Bryant, John, 431.  
Burnett, Gov. Wm. (Mass.), 301.  
Burr, David, 39 (note).  
Butler, Chas., 64-75, 82. (See  
    Butler Bill.)  
Butler, John, 416, 423-426, 435,  
    438-440.  
Butler, Thos., 399.  
"Butler Bill," 63-75.

Cadillac, Antoine, quoted, 16, 20.  
Caldwell, Dr. Jos., 140, 147-152,  
    188, 190.  
"Calvin's Case," 482-483, 484.  
Calvert, Benedict Leonard, 275,  
    277, 302-305, 333.  
Calvert, Cecilius (Lord Balti-  
    more), 361, 372-376, 406-407,  
    418-419, 423, 441-442, 447, 455.  
Calvert, Chas. (Gov.), 275, 277,  
    288, 299, 319, 344, 351.  
Calvert, Chas. (Proprietor), 302,  
    310-311, 322-326.  
Calvert, Geo., 368, 403-405.  
Calvert, Leonard, 368, 379, 383-  
    389, 392, 394, 403-407, 408-  
    409, 420-421, 423, 426-427,  
    430-433, 434-437, 442-444, 445-  
    446, 461.  
"Calvert Papers," quoted, 347-  
    348.  
Cameron, Duncan, 129 (note).  
"Cape Fear and Deep River Nav-  
    igation Co.," 167.  
"Cape Fear Navigation Co.,"  
    122, 162-169.  
"Cape Fear and Yadkin Valley  
    Railroad," 190, 191.  
"Cape Fear, Yadkin and Pedee  
    Railroad Co." (See "Fay-  
    etteville and Western.")  
Carroll, Chas., 327.  
Carroll, Chas. (of Carrollton), 326,  
    352.  
Carter, Major, 136.  
"Catawba River Co.," 177.  
"Central Bank of Japan." (See  
    "Japan.")  
"Central Canal," 54, 62 (note),  
    75 (note).  
Chalmers, Geo., quoted, 276.  
"Charles River Bridge Co. vs.  
    Warren Bridge Co.," 82.  
Charlevoix, 26.  
"Charlotte and South Carolina  
    Railroad," 202.  
Chartres, Fort, 19.  
Cherokee lands, 125-126, 193.

"Chesapeake and Ohio Canal," 107.  
 "Cincinnati and Charleston Railroad," 197-198.  
 Claiborne, Wm., 361-365, 366-367,  
     375-376, 380-381, 394, 395-410,  
     412, 414-417, 433-437, 438-442.  
 "Clan notes," 235, 236-240.  
 Clarke, Capt., 122.  
 Clergymen (Maryland), 286-293,  
     295, 337-338, 342-343.  
 Clinton, Gov., quoted, 94.  
 "Cloberry & Co." (Clobury &  
     Murehead), 362-364, 375, 395,  
     399, 401-402, 406, 407, 414,  
     424-426, 434, 436.  
 "Clubfoot & Harlow's Creek  
     Canal," 186-187.  
 "Commissary" (Maryland), 329-  
     331. (See "Maryland—Cler-  
         gymen's Fees.")  
 "Company of the Colony of Can-  
     ada," 18, 22.  
 Congress (U. S.), action on Wa-  
     bash Canal, 38-45.  
 Cooper, Jesse, 136.  
 Cooper, John, 182 (note).  
 Copley, Rev. Thos., 418 (note),  
     428-429, 444-447, 450.  
 Cornwallis, Thos., 368-370, 379-  
     380, 403-405, 408, 421, 425,  
     427, 430-432, 439, 442-444, 452-  
     454, 457.  
 Cresap, Maj. Thos., 332-333.  
 Croghan, Geo., 23.  
 "Cross-Cut Canal," 54, 62.  
 Currency (paper). (See "Mary-  
     land," etc.)  
 Darnall, Henry, 326.  
 Dawson, Wm., 410.  
 De Celeron, 30.  
 Delaware Indians, 17.  
 Detroit, 16, 19, 20, 22 (note), 23,  
     24-25, 27-28, 30.  
 "Dismal Swamp Canal," 180, 181-  
     185.  
 Douglass, Dr., quoted, 313-314.  
 "Dove," The, 372, 376-381, 383,  
     392, 394.  
 Dulany, Daniel (Elder), 277, 283,  
     284, 288-289, 291-292, 293,  
     296, 299, 305, 310.  
 origin, 316.  
 early life, 316-319.  
 Dulany, Daniel (Elder)—  
     attorney-general, 319-320.  
     legislator, 320-326.  
     "agent," 326-329.  
     "commissary," 329-331.  
     in boundary controversy, 331-  
         334.  
     in council, 335-338.  
     in tobacco controversy, 336-343.  
     landed interests, 345-347.  
     on immigration, 347-350.  
     legal controversies, 495, 498,  
         499, 500, 502, 511-518, 526-  
         529, 532, 543-570.  
 Dulany, Daniel (Younger), 326,  
     329, 331, 334, 351-352, 529-530.  
 Dubuisson, Sieur, 19.  
 Eddis, Mr., quoted, 346.  
 Eden, Robert, 276, 326, 340.  
 England, Church of, clergymen.  
     (See "Maryland.")  
 English, relations with Indians,  
     28-29.  
     struggles with French, 28-31.  
     trade routes, 91-92.  
     statutes. (See "Maryland.")  
 Evelin, Capt. Geo., 414-417, 424-  
     426, 431, 432, 440, 451, 457,  
     458.  
 Eversfield, Rev. John, 518-524,  
     526-527, 529, 532.  
 "Experimental Railroad Co.," 191.  
 "Fayetteville and Western Rail-  
     Road Co.," 192-193, 195.  
 "Fayetteville Railroad Co.," 189-  
     190.  
 Ffiges, Arthur, 398.  
 Fleet, Capt. Henry, 384, 385, 386,  
     402-403, 408.  
 Franklin, Benjamin, 302.  
 Franquelin maps, 14-15.  
 French, use Wabash route, 9-15,  
     90-91.  
     western settlements, 15-16.  
     forts, 17-18.  
     trading posts, 18-31.  
     fur trade, 25-26, 91.  
 French and Indian war, 28-29.  
 Fulton, Hamilton, 123, 155.  
 Fur trade, 25-26, 91.  
 Gales, Jos., 122.  
 Gallatin, Albert, 152-156, 183-184.  
 Galloway, Jas., 182 (note).

Gaston, Judge Wm., 137 (note).  
 George, Joshua, 283.  
 Gist, Christopher, 30.  
 Gordon, Patrick, 301.  
 Graham, Gov. (N. C.), quoted, 202-203.  
 Gray, Francis, 452-454.  
 "Great Western River and Transportation Co.", 205.  
 "Greensboro Convention" (1838), 130 (note).  
 "Greenville and Roanoke Railroad Co.", 193-194, 198.  
 "Halifax and Weldon Railroad Co.", 194.  
 Hamilton, Andrew, 320-321.  
 Hamilton, Gen., 32 (note).  
 Hanilan, Doyle O., 190.  
 Hanna, Samuel, 39 (note).  
 "Han Satsu." (See "Clan Notes.")  
 Hart, Capt. John, 275, 288, 294, 319, 327.  
 Harvey, Sir John, 375, 380-381, 388-389, 404-407, 410-413.  
 Haulsey, Richard, 398.  
 Hawks, Dr., 287 (note), 288, 290, 293, 295.  
 Hawley, Jerome, 368-370, 379-380, 404-405, 407, 421, 425, 433, 442-444, 454.  
 Haw river improvements, 178.  
 Henderson, Jacob, 288, 290-291, 293.  
 Hendricks, Gov. (Indiana), 38, 43.  
 Henry, Robert, 333.  
 Henry, Robert Jenkins, 334.  
 Heyward, John, 122.  
 Holden, W. W., 138.  
 Howard, Michael, 283.  
 Huntington county (Ind.), 95.  
 Hutchins, Thomas, 23, 24-25.  
 Hutchinson, Gov., quoted, 475.  
 Hyde, John, 300 (note), 301.  
 Hyde, Samuel, 290-291, 298-299, 300 (note).  
 Iberville, 27.  
 Illinois, favors Wabash canal, 38-39.  
 Indiana, and Wabash canal, 38-39, 45-48, 49-50, 51-64.  
 state debt, 59-74.  
 growth, 93-96.  
 immigration, 95-98.  
 industries and commerce, 98-106.

Indians. (See "Maryland," etc.)  
 Internal improvements. (See "North Carolina," etc.)  
 Iroquois, 25, 28.  
 Jamaica, English statutes in, 484-485.  
 James, Mrs. Gertrude, 398, 416, 425, 458.  
 James, Rev. Richard, 398, 414.  
 James River canal, 107.  
 Japan, paper currency in, 213-268.  
 historic issues, 215.  
 revolution of 1868, 217-219.  
 early financial measures, 220-235.  
 first currency issue, 222-226.  
 opposition, 227-229.  
 depreciation, 229-230.  
 causes, 234-235.  
 remedial measures, 230-235.  
 varieties of currency, 236-252.  
 "clan notes," 236-240.  
 government notes, 240-241.  
 civic department notes, 241-242.  
 treasury convertible notes, 242-246.  
 colonial convertible certificates, 246-247.  
 "new paper money," 247-252.  
 improved paper money, 252.  
 redemption, 253-267.  
 national banks, 256, 260, 262-266.  
 currency depreciation, 254, 257-260.  
 financial measures, 254-255, 257-258, 260-262, 264-267.  
 "Bank of Japan," 262-266.  
 bibliography, 268.  
 Jefferson, Thos., 152.  
 Jennings, Gov. (Indiana), quoted, 37.  
 Jennings, Edmund, 333.  
 Jennings, Congressman, 38.  
 Jennigan, T. R., quoted, 261.  
 Jesuits. (See "Maryland," Altham," "Copley," "White.")  
 Jones, Benj., 181.  
 Jones, Jos., 181.  
 Kaskaskia, 18, 21, 27.  
 Keith, Gov. (Pa.), 490-491.  
 Kemp, Richard, 426-427.  
 Kent Island. See "Claiborne," "Maryland," etc.)

Kilty, Wm., 505.  
 Kuroda, 246, 248.

Land scrip, 60-61.  
 Lane, Gen. Jos., quoted, 67 (note).  
 La Salle, Robert de, 12-13.  
 Lawyers, in Massachusetts, 281 (note).  
     in Maryland, 281-286.  
 Lechford, Sir Richard, 372.  
 Lewger, John, 330, 421-422, 427,  
     430-433, 434, 435, 439, 442,  
     445, 447-448, 452-454, 456, 459.  
 Lewis, Wm., 452-454.  
 Little river improvements, 178.  
 Lloyd, Edward, 334.  
 "London Searcher," The, 372.  
 "Louisville, Cincinnati and Char-  
     leston Railroad Co." (See  
     "Cincinnati and Charleston,"  
     etc.)

McAfee, Capt., quoted, 33.  
 McKenzie, Wm., 182 (note).  
 McMahon, quoted, 503-504.  
 Macon, Nathaniel, 138.  
 Malcolm, Rev. Alex., 334.  
 "Mammoth Bill," 51.  
 Manly, Charles, 138-139.  
 Marcy, Gov. (N. Y.), quoted,  
     50-51.  
 Maryland, "Beginnings of," 359-  
     364.  
     settlement, 359-360.  
     Claiborne's enterprise, 361-365.  
     opposition, 365-367.  
     first expedition, 367-374.  
     proprietary's instructions, 373-  
     376.  
     voyage, 376-381.  
     landing 381-383.  
     Indians, 383-390, 400, 445.  
     "St. Mary's," 386-392.  
     early trade, 392-394.  
     Claiborne, 394-410, 414-417, 440-  
     442.  
     growth, 417-419.  
     government, 420-423.  
     attacks Kent Island, 423-426.  
     General Assembly, 426-433, 437-  
     440.  
     seizes Kent Island, 433-437.  
     religious affairs, 444-447, 452-  
     454, 459-460.  
     court records, 451-455.  
     Third Assembly, 455-459.  
     first laws, 459-464.

Maryland—Economics and poli-  
     tics, 273-352.  
     close of royal government, 275.  
     political disputes, 276-278.  
     trade, 278-281, 344-345.  
     lawyers' fees, 281-286.  
     clergymen's fees, 286-293, 295,  
     337-338, 342-343.  
     officers' fees, 293-295, 304-305,  
     315, 326-327.  
     legislation, 296-297.  
     paper currency, 297-298, 302-  
     303, 306, 309, 311-314.  
     commerce, 298-301.  
     dispute with Pennsylvania, 331-  
     334.  
     tobacco inspection, 336-343.  
     immigration, 345-350.

Maryland—English statutes in,  
     471-570.  
     bibliography, 472-474.  
     early legal system, 476-479.  
     under royal government, 480.  
     legal theory, 481-494.  
     "Calvin's Case," 482-483.  
     citizenship, 483.  
     in Jamaica, 483-486, 491-493.  
     idea of "conquest," 486-488.  
     laws in South Carolina, 489.  
     in Pennsylvania, 489-494.  
     legal controversies, 495-506.  
     legislative development, 496-  
     502.  
     "Oath Law," 501-503.  
     later views, 504-505.  
     legal arguments, 509-524.  
     "Act of Limitation," 508-509.  
     "Habeas Corpus Act," 509-513.  
     legal rights, 515-518, 519-524.  
     results of controversy, 525-533.  
     "Resolutions of 1722," 537-540.  
     "Rights of Maryland," 543-570.  
     "Maryland Gazette," quoted, 298-  
     302, 338-340.  
 Matsukata, Count, 220, 254-255,  
     261-266.  
 Mereness, Dr., quoted, 327.  
 Miami Indians, 16-17, 26 (note),  
     27, 31.  
 Michigan, state debt, 64-65.  
 "Middle Provincial Railroad"  
     (Japan), 255.  
 "Milton and Salisbury Railroad  
     Co.," 198.  
 Mioka, Hachiro, 219, 222-229.  
 Missions, in Northwest, 22.

"Mitsui Company," 242-245, 247.  
 Montreal, 10, 26-28.  
 "Morris Canal and Banking Co.," 58, 65 (note), 74.  
 Mountney, Alex., 409.  
 Murphy, Judge, quoted, 162, 165.  
 National Road, 108-109.  
 Negroes, in Maryland, 418.  
 "Neuse River Navigation Co.," 176-177.  
 "New German Paper Notes," 249-251.  
 New Orleans, 24, 25-28, 104-105.  
 Niagara, Fort, 19, 26.  
 Noble, Gov. (Ind.), 53, 54-55, 57.  
 Noble county (Ind.), 95.  
 "Norfolk and Edenton Railroad Co.," 201.  
 North Carolina, internal improvements, 121-207.  
 beginnings, 121.  
 early plans, 121-124.  
 state board, 124-127.  
 policy of state, 128.  
 conventions, 128-131.  
 failures, 131-134.  
 political aspects, 135-141, 145-146.  
 constitutional changes, 137-139.  
 physical aspects, 139-141.  
 trade aspects, 142-145, 157-160.  
 plans of Caldwell and Ballatin, 147-156.  
 river improvements, 161-179.  
 Cape Fear river, 162-169.  
 Roanoke river, 169-174.  
 Tar river, 174-176.  
 Neuse river, 176-177.  
 Catawba river, 177.  
 Yadkin river, 177-178.  
 canals, 180-187.  
 Dismal Swamp, 181-185.  
 railroads, 188-206.  
 Petersburg railroad, 188-189.  
 Fayetteville railroad, 189-190.  
 Raleigh and Gaston, 198-201.  
 railroad growth, 205.  
 "North and South Carolina Railroad Co.," 202.  
 "North Carolina Central Railroad Co.," 190-191, 193, 195, 201.  
 "North Carolina Centre and Seaport Railroad Co.," 196.  
 "North Carolina Railroad," 142, 202-205.  
 "Oath Law" (Md.), 501-503.  
 Ocracoke inlet, 144-145.  
 Ogle, Samuel, 275, 288, 309-311, 331, 351.  
 "Ohio Company," 30.  
 Ohio river trade, 108, 109.  
 "Ohio and Wabash" canal, 49-50, 56-57, 62-63, 86-88.  
 Okubo, Mr., quoted, 218-219, 222.  
 Okuma, Count, 221, 226, 256.  
 Ottawa river, 9, 26, 28.  
 Ouiatanon, 19, 21, 22, 25, 27.  
 Paper currency. (See "Japan," "Maryland.")  
 Parks, Wm., 305.  
 Parr, John, 397.  
 Pennsylvania, state debt, 64.  
 boundary dispute with Maryland, 331-334.  
 Perry Micaja, 299, 300 (note).  
 "Petersburg railroad," 188-189, 194.  
 Philpott, Robert, 427, 436, 439.  
 Pickawillany, 30.  
 Pinckie, Henry, 397.  
 Pittsburgh, trade of, 35-36.  
 Plater, Col. George, 316-317, 333.  
 Pontchartrain, Count, 16.  
 Pontchartrain, Fort, 16.  
 Popley, Richard, 398.  
 Porter, Peter Buell, 34-35.  
 "Portsmouth and Roanoke Railroad," 192.  
 Poulton, Father, 447.  
 Purify, Capt. Thos., 396.  
 Quaker missionaries, 33.  
 "Raleigh Convention" (1833) 128-130, (1838) 130-131.  
 "Raleigh and Columbia Railroad Co.," 201.  
 "Raleigh and Fayetteville Railroad Co.," 198.  
 "Raleigh and Gaston Railroad Co.," 198-201.  
 Rankin, Congressman, 40.  
 Ray, Jas. B., 41-42, 46-47.  
 Reese, Thos., 300.  
 Reid, David S., 138-139.

Repudiation. (See "Indiana," "Michigan," etc.)

Ridgely, Nicholas, 298.

Riley, Capt. Jas., 33-34.

"Roanoke Railroad Co." (See "Portsmouth and Roanoke.")

"Roanoke and Raleigh Railroad Co.," 196.

"Roanoke, Danville and Junction Co.," 196-197.

"Roanoke Navigation Co.," 122, 169-174.

Rockfish creek improvements, 178.

Ross, John, 333.

Saigo, Gen., 229.

"Salisbury Convention," 130 (note).

"Seaboard and Roanoke Railroad Co.," 200.

Sedgrave, 452-454.

Sharpe, John, 284. 285.

Sharpe, Horatio, 276, 334, 351.

Shepherd, quoted, 490.

Shawnee Indians, 17.

Sioussat, St. George L., on "Economics and Politics in Maryland," 273-352.

"English Statutes in Maryland," 471-570.

Smith, Thomas, 408-410, 423-426, 435, 438-439.

Smyth, John, 409.

"Sotweed Redivivus," 305-309.

Speight, Jesse, 136.

"St. Mary's," 386-392, 417-419.

State debts. (See "Maryland," etc.)

Steiner, Dr. B. C., 276, 305. 528. on "Beginnings of Maryland," 359-464.

Stevens, John, 185-186.

Stickney, Major, 37 (note), 94.

Stokes, John, 182 (note).,

Swain, D. L., 128.

Takiki, Masayoshi, on "Japanese Paper Currency," 213-268.

Talbot, C., 285.

"Tar River Company," 174-176.

"Tarborough and Hamilton Railroad Co.," 191.

Tasker, Benj., 322, 329, 333, 348.

Tasker, Benj., Jr., 334.

Tessenet, M. du, 27.

Tippecanoe river, 55.

Tobacco in Maryland, 278-281, 285-286, 289-291, 294-295, 298-300, 302-309, 312-314, 324-326, 336-343

*Tonti*, 29.

Trading posts (French), 18-31.

United States government surveys, 42.

Vaughan, Robert, 435, 437, 439.

Vincennes, Sieur de, 19.

Vincennes (Indiana), 19, 21, 23, 24, 25, 27, 31.

Virginia, internal improvements, 171-172, 181-185, 188-189, 192.

Volney, quoted, 21-22, 27-31.

Wabash river, explorers, 10-12.

Indians, 16-17.

French, 24-25, 90-91.

fur trade, 25-28, 91.

"Wabash and Erie Canal," 32-88.

origin, 32-45.

trade necessity, 32-36.

military necessity, 36-37.

federal support, 38-45.

state support, 38-39, 45-48, 49-56, 57-62, 64-74.

organization, 45-50.

work begun, 48.

construction, 48-63, 75-76.

income, 76-80.

financial difficulties, 80-85.

disuse of canal, 85-86.

abandoned, 88.

development of Northwest, 89-112.

immigration, 95-98.

agriculture, 98.

industries, 99-102.

commerce, 102-106, 109.

passenger traffic, 110.

"Wabash Trade Route," 9-112.

early use, 10-15, 18-19, 28, 90-93.

struggle for, 28-31.

Waggamaw river improvements, 178.

Warren, Lieut. Ratcliffe, 410, 439.

Washington, Geo., favors Wabash canal, 32-33, 41.

Water-ways, influence on French settlements, 9-10, 11, 90-91.  
 Watlington, John, 364.  
 Weaver, Chas. Clinton, on "Internal Improvements in North Carolina," 121-207.  
 Weiser, Conrad, 334.  
 "Weldon and Gaston Railroad Co.," 200.  
 West, Attorney-General, quoted, 485.  
 West, Capt. John, 412-413.  
 "Western College of North Carolina," 141.  
 "Western North Carolina Railroad," 204.  
 Whitcomb, Gov. (Ind.), 68-69.  
 White, Father Andrew, 360, 376-377, 380, 381, 382, 384, 386, 388, 417 (note), 418, 428-429, 448-451.  
 Williams, Jesse L., 59 (note), 74, (note).  
 "Wilmington and Manchester Railroad Co.," 202.  
 Wilmington and Raleigh Railroad Co., 194-196.  
 "Wilmington and Weldon Railroad Co.," 189 (note), 199, 200. (See "Wilmington and Raleigh," etc.)  
 Windebank, Secretary (Md.), 406-407.  
 Wintour, Frederick, 403-405, 427, 428, note), 434, 454.  
 Wyandot Indians, 17.  
 "Yadkin River Co.," 177-178.  
 Yancey, Bartlett, 137, 140.  
 Yaocomico Indians, 386-390.  
 Yorke, P., 285, 485.  
 Young, Joan, 397.  
 Young, Capt. Thos., 403-404, 410-411.

## ERRATA.

Page 308, line 7; for "stinkebees," read *stinkebus*.  
 Page 312, line 12; instead of "for," read *from*.  
 Page 314, line 29; for "citizens," read *citizen*.  
 Page 340, note 12.—Since writing this a printed copy of the session laws of 1747 has been found.













